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ESSAY CHIMANLAL SETALVAD

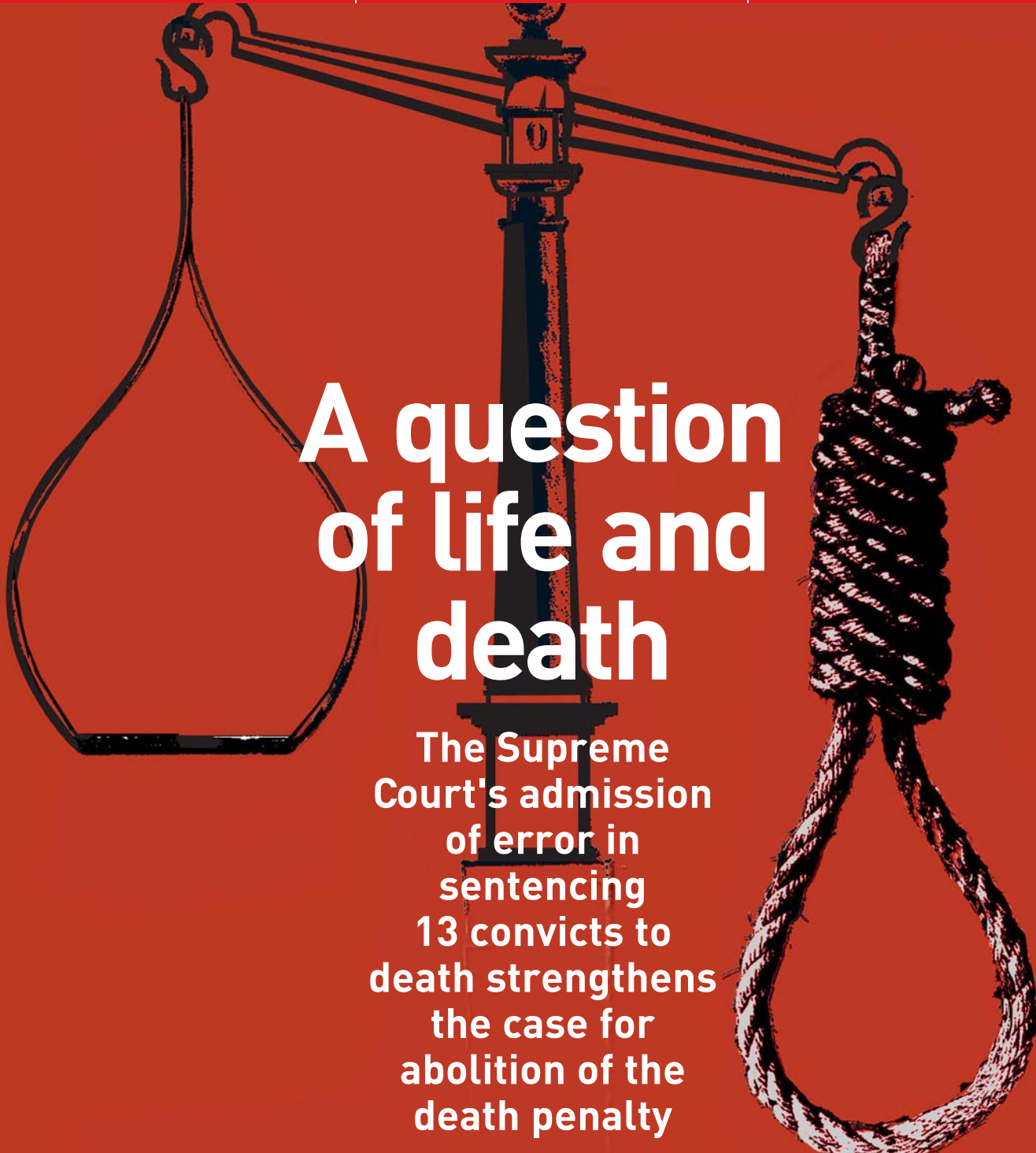
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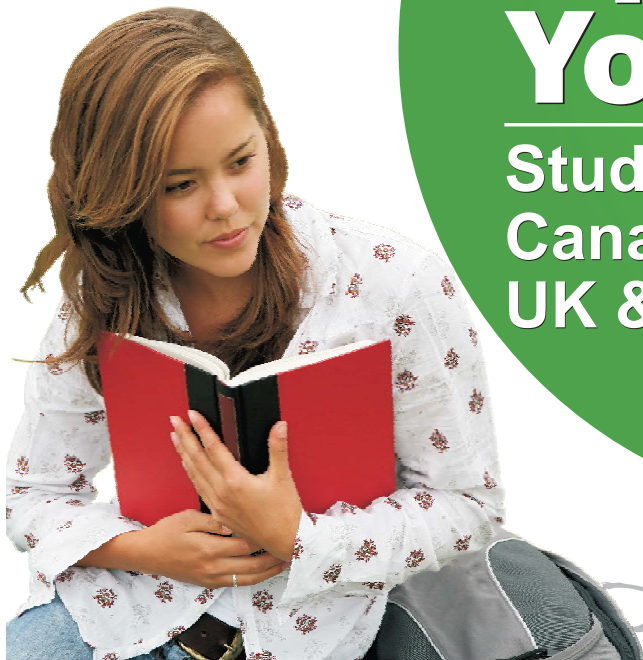


A question of life and death

The Supreme Court's admission of error in sentencing 13 convicts to death strengthens the case for abolition of the death penalty

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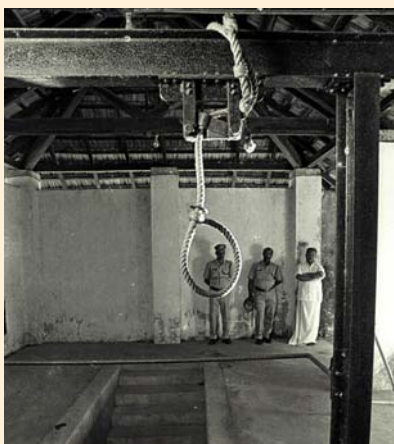
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A case against the

The Supreme Court's admission of error in the sentencing to death of 13 convicts revives the debate over abolishing the death penalty. **BY V. VENKATESAN** IN NEW DELHI

A group of 14 former judges of eminence has, in an appeal to the President, sought his intervention to **commute the death penalty awarded to the convicts, using his powers under Article 72 of the Constitution.**

WITHIN a few weeks of Pranab Mukherjee assuming office as the 13th President of India on July 25, 14 former judges of eminence signed an unusual appeal addressed to the President. The appeal, in the form of separate letters, sought his intervention to commute the death sentences of 13 convicts, currently lodged in various jails across the country, using his powers under Article 72 of the Constitution.

The President would refer the appeal to the Ministry of Home Affairs for its due consideration and advice, but what is so special about these 13 convicts that made the former judges come together and make an impassioned appeal for commutation?

The unusual appeal does not stem from their principled opposition to the death penalty, though some of them may believe in its abolition personally. They have appealed to the President because these 13 convicts were erroneously sentenced to death according to the Supreme Court's own admission and are currently facing the threat of imminent execution. The Supreme Court, while deciding three recent cases, held that seven of its judgments award-

ing the death sentence were rendered *per incuriam* (meaning out of error or ignorance) and contrary to the binding dictum of "rarest of rare" category propounded in the Constitution Bench judgment in *Bachan Singh vs State of Punjab* (1980) (2 SCC 684). The three recent cases were *Santosh Kumar Bariyar vs State of Maharashtra* (2009) (6 SCC 498), *Dilip Tiwari vs State of Maharashtra* (2010) (1 SCC 775), and *Rajesh Kumar vs State* (2011) (13 SCC 706).

The former judges also informed the President in the appeal that two prisoners who had been wrongly sentenced to death, Ravji Rao and Surja Ram (both from Rajasthan), had been executed on May 4, 1996, and April 7, 1997, respectively, pursuant to the flawed judgments. These, they said, constituted the gravest known miscarriages of justice in the history of crime and punishment in independent India. The Supreme Court's admission of error had come too late for them, they wrote.

They told the President that the concerns expressed in the appeal had nothing to do with the larger debate over the desirability of retaining the death penalty. "Rather, they pertain to the administration of the death penalty in a

conscientious, fair and just manner. Executions of persons wrongly sentenced to death will severely undermine the credibility of the criminal justice system and the authority of the state to carry out such punishments in future," the appeal explained.

The judges also annexed an explanatory note to their appeal so as to convince the President that the sentences of these 13 convicts indeed deserved to be commuted. In this, they cited the landmark *Bachan Singh vs State of Punjab*, which laid down the "rarest of rare" doctrine, and said it emphasised giving sufficient weight to the mitigating circumstances pertaining to the crimi-



THE SUPREME COURT. The concerns expressed in the judges' appeal pertain to the administration of this penalty in a fair manner.

V. SUDERSHAN

death penalty



nal along with the aggravating circumstances relating to the crime.

They then explained how this *Bachan Singh* dictum laid down by a Constitution Bench had been reversed in a later case.

In *Ravji @ Ram Chandra vs State of Rajasthan* (1996) (2 SCC 175), a case which was decided by a Bench of two judges, the Supreme Court held that “it is the nature and gravity of the crime but not the criminal which are germane for consideration of appropriate punishment in a criminal trial” (paragraph 24). This aspect of the decision in the *Ravji* case directly conflicts with the *Bachan Singh* ruling. Thereafter, the Supreme Court repeatedly invoked the *Ravji* precedent in death penalty cases so as to limit the focus only to the circumstances pertaining to the crime and exclude the circumstances pertaining to the criminal until another two-Bench judge of the Supreme Court discovered this folly in *Bariyar*, in 2009.

In *Bariyar*, the Bench held that in all cases, including the most brutal and heinous crimes, circumstances pertaining to the criminal should be given full weight. In this case, the appellant had killed his victim, a young boy, whom he had kidnapped for ransom. Yet, the Bench commuted his death sentence, imposed by the Bombay High Court, to rigorous imprisonment for life as, in its view, the mitigating factors in the case were sufficient to take it out of the “rarest of rare” category. The Bench believed that though the socio-economic backwardness of the convict might not dilute guilt it was a mitigating circumstance and held there was a potential for reform. Relying on *Bachan Singh*, the court in *Bariyar* held that the prosecution must

THE GALLOWS AT the central jail in Kannur, Kerala. A file photograph.

MAHESH HARILAL



ANEEL MISHRA

DAYANIDHI BISOI, ONE of the 13 whom the court admitted was wrongly convicted. The Odisha Governor commuted his sentence to life imprisonment.

prove, as a precondition for awarding the death penalty, that reform and rehabilitation of the criminal would not be possible.

The key issue here is Section 354 (3) of the Code of Criminal Procedure (CrPC). This provision states that when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of the sentence of death, the special reasons for such sentence.

‘SPECIAL REASONS’

In *Bachan Singh*, the Supreme Court explained what the phrase “special reasons” meant in this provision. It said: “The expression ‘special reasons’ in the context of this provision obviously means ‘exceptional reasons’ founded

The 13 convicts who were wrongly sentenced to death by the Supreme Court

1 Dayanidhi Bisoi

(Dayanidhi Bisoi vs State of Orissa [2003], 9 SCC 310)

2 Mohan Anna Chavan

(Mohan Anna Chavan vs State of Maharashtra [2008], 7 SCC 561)

3 Shivaji @ Dadya Shankar Alhat

(Shivaji @ Dadya Shankar Alhat vs State of Maharashtra [2008], 15 SCC 269)

4 Bantu (Bantu vs State of U.P.

[2008], 11 SCC 113)

5 Sattan @ Satyendra

(State of U.P. vs Sattan @ Satyendra and Ors. [2009], 4 SCC 736)

6 Upendra (same as above)

7 Ankush Maruti Shinde

8 Ambadas Laxman Shinde

9 Bapu Appa Shinde

10 Raju Mhasu Shinde

11 Rajya Appa Shinde

12 Surya @ Suresh Shinde

(7 to 12: Ankush Maruti Shinde and Ors vs State of Maharashtra [2009], 6 SCC 667)

13 Saibanna (Saibanna vs State

of Karnataka [2005], 4 SCC 165)

on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal” (paragraphs 161 at page 738 of the judgment). In paragraph 163, *Bachan Singh* further noted: “...in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302 of [the] Penal Code, the court should not confine its consideration ‘principally’ or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal”. The circumstances of the criminal would include, as the Supreme Court held in one case, the mindset of the criminal and whether he was under the grip of social factors such as caste.

In *Bariyar*, the Supreme Court got an opportunity to explain this further: “The rarest of rare dictum serves as a

guideline in enforcing Section 354(3) and entrenches the policy that life imprisonment is the rule and death punishment is an exception. It is a settled law of interpretation that exceptions are to be construed narrowly. That being the case, the rarest of rare dictum places an extraordinary burden on the court, in case it selects death penalty as the favoured penalty, to carry out an objective assessment of facts to satisfy the exceptions ingrained in the rarest of rare dictum.”

Having understood the *Bachan Singh* judgment clearly, the *Bariyar* Bench had no compunction in exposing the flaws in the *Ravji* judgment. The Bench said in paragraph 63: “We are not oblivious that *Ravji* case has been followed in at least six decisions of this court in which death punishment has been awarded in last nine years, but, in our opinion, it was rendered *per incuriam*.”

The *Bariyar* Bench went further in identifying six cases where the Supreme Court had erroneously applied the precedent laid down in the *Ravji* case, and held that the court had wrongly decided them. They were

Shivaji vs State of Maharashtra,
Mohan Anna Chavan vs State of Maharashtra,

Bantu vs State of Uttar Pradesh (President Pratibha Patil commuted the sentence of this convict),

Surja Ram vs State of Rajasthan (Surja Ram was executed),

Dayanidhi Bisoi vs State of Orissa, and

State of U.P. vs Sattan (this case also includes another convict, Upendra).

The *Bariyar* Bench held: “It is apparent that (in these cases) *Ravji* has not only been considered but also relied upon as an authority on the point that in heinous crimes, circumstances relating to the criminal are not pertinent” (paragraph 63).

The Bench observed that the Supreme Court had not brought on record and considered any of the circumstances relating to the seven convicts in these six cases during the sentencing deliberations. Despite the



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*dap - differently abled person

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Former judges who have signed the appeal to the President.

SEPTEMBER 7, 2012



◀ **JUSTICE P. B. SAWANT**
(former Judge, Supreme Court of India)



◀ **JUSTICE K.P. SIVASUBRAMANIAM**
(former Judge, Madras High Court)

JUSTICE A.P. SHAH ▶
(former Chief Justice, Delhi High Court)



JUSTICE P. C. JAIN ▶
(former Judge, Rajasthan High Court)



◀ **JUSTICE BILAL NAZKI**
(former Chief Justice, Orissa High Court)



◀ **JUSTICE S. N. BHARGAVA**
(former Chief Justice Sikkim High Court and former Chairperson, Assam Human Rights Commission)

JUSTICE P.K. MISRA ▶
(Chairman, Goa Human Rights Commission and former Chief Justice, Patna High Court)



JUSTICE B. G. KOLSE-PATIL ▶
(former Judge, Bombay High Court)



◀ **JUSTICE HOSBET SURESH**
(former Judge, Bombay High Court)



◀ **JUSTICE RANVIR SAHAI VERMA**
(former Judge, Rajasthan High Court)

JUSTICE PANACHAND JAIN ▶
(former Judge, Rajasthan High Court)



JUSTICE B. A. KHAN ▶
(former Chief Justice, Jammu and Kashmir High Court)



◀ **JUSTICE PRABHA SRIDEVAN**
(former Judge, Madras High Court)



◀ **JUSTICE B. H. MARLAPALLE**
(former Judge, Bombay High Court)

binding precedent of *Bachan Singh, Ravji's* decision and the decisions in the aforementioned six cases have narrowed the sentencing considerations to circumstances relating to the crime alone, as noted in *Bariyar*.

The *Bariyar* Bench, therefore, declared the judgments in the above six cases *per incuriam* for having followed *Ravji*. Another case, *Ankush Maruti Shinde and Ors vs State of Maharashtra* (2009) (6 SCC 667), which explicitly followed *Ravji's* reasoning, was decided just a few days before *Bariyar* and was, therefore, not noticed in that decision. In this case, the Supreme Court confirmed the conviction and death sentence of six convicts, one of whom was declared a juvenile recently and, therefore, should not have been sentenced to death (see box). The former judges have appealed to the President to commute the death sentence of these convicts also.

COMMUTATION JUSTIFIED

In addition to the six cases which *Bariyar* faulted for having followed *Ravji's* wrong precedent, it identified another case where the commutation of the death sentence is justified. The case is *Saibanna vs State of Karnataka* (2005). Saibanna was a life convict. While on parole, he killed his wife and daughter. The Supreme Court sentenced him to death on a reasoning which effectively made death punishment mandatory for the category of offenders serving life sentence.

However, the Supreme Court had in *Mithu vs State of Punjab* (1983) already struck down Section 303 of the Indian Penal Code, which provided for mandatory death punishment for offenders serving life sentence. The reason is that if the death sentence is mandatory, then it is meaningless to hear the convict on the question of sentence, and it becomes superfluous to state the reasons for imposing the sentence of death. The *ratio decidendi* (the legal principle which forms the basis of the judgment) of *Bachan Singh* is that the death sentence is constitutional if it is prescribed as an alternative for the offence of murder and

Note: Justice Marlapalle has asked for commutation of only seven convicts as he was the Judge who upheld the death sentence in the Bombay High Court for the six convicts in the Ankush Maruti Shinde case. Justice Panachand Jain has added extra grounds for commutation in addition to what is stated by the other judges.

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Wi-Fi SECURITY

Internet users are widely using Wi-Fi devices to access Internet. Every year millions of Wi-Fi devices are sold in the market. Out of these most of the wireless devices are vulnerable in their default configuration mode. Since end users are not fully aware of security levels to be set on these devices, these get rendered vulnerable. By taking advantage of these unsecured Wi-Fi devices terrorists and hackers fulfill their needs.

Anyone with Wi-Fi connectivity in his computer, laptop or mobile can connect to unsecured Access Points (wireless routers). Anyone in the range of Access point can connect to an Access Point if it is unsecured. Once the connection is established the attacker can send mails, download classified/confidential stuff, initiate attack on other computers in the network, send malicious code to others, install a Trojan or botnet on the victims computer to get long term control on it through Internet, etc.

All these criminal acts will naturally be associated with the legal user of Access Point (wireless router). It is up to the legal user of the Access Point to defend himself to prove that he has not been involved in these acts. It now becomes the responsibility of the user to secure his/her own Access Point.

Lets see some real incidents that took place in the recent years. Terrorists and hackers used unsecured Access Points to perform illegal activities on the internet. Hackers penetrated into open Wi-Fi network of luxury hotels owned by the Thompson Group in New York, Los Angeles and Washington DC and stole the private emails sent by the guests. The hackers then attempted to extort money from the hotel chain by threatening to publish the emails. (www.crppc.in)

Just 5 minutes before Delhi blasts on September 2008 terrorists used an unsecured Wi-Fi connection of a company at Chembur in Mumbai to send terror emails to authorities and news channels. These hackers do not leave a trail of footprints for the investigators to

arrive at a logical conclusion. The audit trail ends at Wi-Fi Access Point of the legal user. So it is becomes imperative for the users to secure their own Access Points(wireless router). The following are the steps to secure an Access Point.

Tips for securing Wireless Communications

Always use strong password for encryption

A strong password should have atleast 15 characters, uppercase letters, lowercase letters, numbers and symbol. Also it is recommended to change the encryption key frequently so that it makes difficult for the cracker to break the encryption key. Do not use WEP for encryption, rather use WPA/WPA2.

Restrict access to the Access Point based on MAC address

In order to allow authorized users to connect to the Access Point, wireless clients should be provided access based on MAC address.

Change the default username and Password of the Access Point

Most of the users do not change the default passwords while configuring the Access Point. But it is recommended to keep a strong password, as this default password information can be known from product manufacturers.

Do not broadcast your network name

SSID information is used to identify a Access Point in the network and also the wireless clients connect to the network using this information. Hence, in order to allow authorized users to connect to the network, the information should not be provided in public.

Disable DHCP service

When the number of users accessing the Access Point is less, it is recommended to disable the DHCP service. As this may make the attackers easy to connect to the network once they get associated with the Access Point.

Shutdown the Access Point when not in use

Hackers try to brute force the password to break the keys, so it is good practice to turnoff the Access points during extended periods of Non-use.

For more details : www.infosecawareness.in

A precedent ignored

IN 1937, when hanging was the standard punishment for murder, while adjudicating Athappa Goundan's criminal appeal, the Madras High Court was confronted with conflicting interpretations of Section 27 of the Evidence Act – one that would exclude the confessional aspect of the statement and the other that would include it. One interpretation helped the accused, the other helped the prosecution. If the confessional part of the statement was included, the accused would be convicted and hanged. The Bench referred the question of law to a Full Bench of the court. The Full Bench ruled that Section 27 would include the confessional part of the statement. This view became influential not just in Madras Presidency (where it became the law) but also in the rest of British

India. On the basis of this judgment, Goundan and many other prisoners were hanged across British India.

In 1945, this issue about the correct interpretation of Section 27 of the Evidence Act was agitated again before another Bench of the Madras High Court in the case of Pulukuri Kotayya and seven others who had been sentenced to death by the trial court. Bound by the judgment of the Full Bench in *Goundan*, the court dismissed the appeals. The prisoners appealed to the Privy Council, which overruled *Goundan* and set them free, holding that the correct interpretation of Section 27 excluded the confessional part of the statement.

The story did not end there. Because of the ruling in *Goundan*, a large number of prisoners had been executed and many more were fac-

ing the gallows. Madras Presidency instituted a commission to examine all convictions based on the *Goundan* judgment, reprieved the sentences, and unconditionally released the prisoners.

Over the last two years, numerous letters have been written to the Union and State governments, the President and the Governors of States informing them that the *Ravji* group of death-row prisoners under their jurisdiction had had their Supreme Court judgments declared *per incuriam*, but to no avail. Did the British government care more for Indians who had been wrongly sentenced to death than the Indian government did 72 years later when *Bariyar* overruled *Ravji*? Or did it just care more for the rule of law?

Yug Mohit Chaudhry

if the normal sentence prescribed by law for murder is imprisonment for life. In *Bachan Singh*, the court also insisted that a court could impose the death penalty only in the rarest of rare cases when the alternative option is unquestionably foreclosed. (The *ratio decidendi* of a five-judge Bench would be binding on other Benches of the Supreme Court, unless overruled by a Bench comprising more than five judges. *Bachan Singh* was delivered by a five-judge Constitution Bench.)

In *Saibanna*, the court was doubtful whether a person already undergoing imprisonment for life could be visited with another term of imprisonment for life to run consecutively with the previous one. Rather than resolve this doubt through constitutional means, the Supreme Court opted for the easy way out by imposing the death penalty on Saibanna. In *Bariyar*, therefore, the Supreme Court declared its own ruling in *Saibanna* as being inconsistent with both the *Mithu* and *Bachan Singh* judgments and, as a re-

sult, *per incuriam*. Of the 13 convicts who have been identified in the judges' appeal, Bantu's death sentence was commuted by President Pratibha Patil in June this year. Another convict, An-kush Maruti Shinde, has been declared a juvenile and has been removed from death row. Dayanidhi Bisoi's death sentence was commuted to life imprisonment by the Governor of Odisha in 2003. President Pratibha Patil commuted the death sentences of Sattan and Upendra in July 2011.

Thus, there are now only eight con-

The *Bariyar* Bench had no compunction in exposing the flaws in the *Ravji* verdict.

victs whose death sentences ought to be commuted in line with the Supreme Court's judgment in *Bariyar*. Of these, only Saibanna's mercy petition was pending in the President's Secretariat when Pratibha Patil completed her term. It is inexplicable why the Ministry of Home Affairs did not recommend the commutation of Saibanna's death sentence even though his case was brought to the notice of the President more than a year ago. Going by Pratibha Patil's illustrious record in commuting the death sentence of 35 convicts in just two and a half years of her five-year tenure, she might have commuted Saibanna's sentence, too, had the government recommended it.

The mercy petitions of the remaining seven convicts have not yet reached the President. Most of them have got their mercy petitions rejected by the Governors of the States where they are lodged in jails awaiting execution. When Pratibha Patil completed her term on July 24, she left a fascinating record and a legacy that none of her

successors can ignore easily. She began with a backlog of 23 undecided mercy petitions from her immediate predecessors and received nine fresh petitions, involving 40 convicts.

Of these, she accepted 18 petitions (involving 35 convicts), rejected three (involving five convicts), and passed on 11 undecided petitions (involving 16 convicts) to her successor, Pranab Mukherjee. One of the 35 convicts whose sentences she commuted on June 2 this year, Bandu Baburao Tidake had died on October 18, 2007, while waiting for her decision, but the report about his death apparently did not reach the Home Ministry when it recommended his commutation. It is a moot question whether Tidake would have lived longer had the President commuted his sentence before his death.

But Pratibha Patil's legacy should not be just seen in quantitative terms. It also has a qualitative dimension. The Home Ministry had often changed its recommendations with regard to the rejection of mercy petitions whenever there was a change of Minister with a new government or with a Cabinet reshuffle, and agreed to a review of the pending recommendations with the President. If one Home Minister recommends the rejection of the mercy petition of a convict, it does not follow that his successor would recommend rejection, if reconsidered. Thus, it appears that in many cases of commutation recommended by Home Minister P. Chidambaram, his predecessors Shivraj Patil or L.K. Advani had recommended rejection.

Rightly, Pratibha Patil decided to wait during the first part of her term in office and used the opportunity provided by the formation of the new government after the 2009 general elections to get the pending mercy petitions reviewed afresh by the new Home Minister. Legally, the President is bound by the advice of the current government and not the one preceding it. Therefore, it can be inferred that she thought it fit to delay decisions on those mercy petitions which the government wanted her to reject. She perhaps thought that if successive Home

Relief for a juvenile

ON July 7, Ankush Maruti Shinde was saved from being erroneously executed. The Nasik Sessions Court declared him to be a juvenile after he had spent more than nine years in prison, six of which were spent in a solitary cell as a death-row inmate. The Governor had rejected his mercy petition, and the courts too had failed to investigate the matter.

The Supreme Court has repeatedly directed trial courts to investigate the age of the accused as a preliminary issue, but cases like that of Ankush come up time and again. Ankush's appearance should have prompted the Magistrate and the Sessions Court to inquire into his age. Instead, he was sentenced to death by the trial court, the High Court and the Supreme Court without any attempt being made to ascertain his age on the date of offence even though unimpeachable documentary proof was available showing him to be a juvenile.

Ankush's school leaving certificate clearly showed that he was a juvenile on the date of offence. The process to prove his juvenility after the death sentence had been confirmed by the Supreme Court was protracted and tedious. The Nasik Sessions Court now had to tread very carefully. It took months for

the application to be registered and numbered, as the court, quite without precedent, asked for certified copies of even the reported judgments in Ankush's case.

One of the witnesses during the inquiry was Ankush's mother. She came to the court with the wife of Raju Mhasu Shinde, who is Ankush's cousin, co-accused, and fellow death-row inmate. She saw her son, who was in Nagpur Central Prison, on the videoconferencing screen. At the end of the day, she only wanted to know whether Ankush would be saved from the gallows. She expressed her fear that she might lose Ankush very soon and did not mind if he continued to remain in jail for the rest of his life.

Given the circumstances, the court's order declaring Ankush to be a juvenile in conflict with law is commendable and brave. It could have easily wilted under the pressure of the Supreme Court's death sentence, the prosecution's emotional arguments, or by the nature of the crime. There are many more death-row prisoners like Ankush who are juveniles under law and entitled to its protection, but their cases have not been investigated.

*Vijay Hiremath
Vijay Hiremath is an Advocate of
the Bombay High Court.*

Ministers had recommended rejection of the same mercy petition, then probably her options were closed.

Her aide told *Frontline*: "She saw to it that the government has applied its mind, and due deliberations have taken place on every pending petition."

It clearly suggests that she was dissatisfied with the quality of advice tendered by Chidambaram's predecessors on the pending mercy petitions. As her aide explained: "She took note of the extenuating circumstances in every case, as advised by the government."

More clarity is expected on the merits of her and the Home Ministry's handling of mercy petitions when the Supreme Court, which is currently hearing the pleas of the five convicts against the rejection of mercy petitions by her, gives its verdict. Meanwhile, there is enough reason to believe that the legal safeguards aimed at avoiding the miscarriage of capital punishment have failed to deliver, and public opinion in India can no longer ignore the global movement in favour of the abolition of the death penalty. □

‘Criminal justice syste

Interview with Justice A.K. Ganguly, former Supreme Court judge and Chairman of the West Bengal Human Rights Commission. BY SUHRID SANKAR CHATTOPADHYAY

“[In] the law relating to capital punishment... the mitigating and the **aggravating circumstances can be** structurally indicated and defined, and it would be the court’s duty to consider them before awarding the death penalty.”

JUSTICE A.K. Ganguly was a judge of the Supreme Court from 2008 to 2012 and before that Chief Justice of the Orissa and Madras High Courts. As a Supreme Court judge, he passed landmark judgments in various important cases, including the 2G spectrum case, in which he was a part of the Bench

along with Justice G.S. Singhvi. He is now Chairman of the West Bengal Human Rights Commission. In this interview with *Frontline*, Justice Ganguly, known for his outspoken views and comments, talked about various aspects of the death penalty in the country. “The criminal justice system in our country needs a substantial overhaul,” he said and pointed out that courts must scrupulously observe the ratio (underlying principles) in the Bachan Singh case and “must eschew the principles of retributive justice”. Excerpts from the interview:

The “rarest of rare” doctrine laid down in the Bachan Singh judgment to limit application of the death penalty has, according to observers, resulted in the imposition of the death penalty in cases that did not warrant it. Would you agree with this view?

I would agree, and this is also the judicially accepted position. If you look at the background of the Bachan Singh case, there are several aspects that



A.K. GANGULY: “If one mitigating circumstance is enough to indicate that the convict cannot be subjected to the death penalty, then that must weigh in the conscience of the judge.”

m needs overhaul'

have to be considered. The question of death penalty in respect of certain crimes was introduced to our jurisprudence by the Indian Penal Code, which was introduced in British India by our colonial masters. There was a Code of Criminal Procedure [CrPC], 1898. Its Section 367(5) mandated that in a case where the death penalty was prescribed, the court while granting any penalty other than the death penalty had to record reasons. Therefore, prior to the coming of the Constitution, the position was that the death penalty was the rule and life imprisonment was an exception. This provision continued in our Constitution in 1950 and was deleted in 1956.

But the Code of 1898 continued till it was replaced by the present Code of 1973. Under the 1973 Code, some remarkable changes took place in view of the recommendations of the 41st Law Commission, which held that our sentencing procedure was not properly framed. As a result, in the 1973 Code two provisions were introduced – Section 235 (2), which provides for hearing the accused on the question of sentence; and Section 354, where Sub-section 3 provides that where death penalty is to be given the court has to record special reasons. These two provisions were very important as they led to the “rarest of rare” doctrine. Prior to *Bachan Singh*, in 1973, in the Jagmohan case, the constitutionality of the death sentence provision was questioned, and it was affirmed. But at that time it did not have the benefit of the aforesaid two provisions.

Therefore the *Bachan Singh* ratio is largely built around these two provisions, and the Supreme Court held that the death penalty should be an exception and life sentence the rule. The previous jurisprudence was reversed. Our constitutional jurisprudence had also undergone substantial change – in view of the decision in *Maneka Gand-*

hi, the American doctrine of “due process” was introduced, and in *Sunil Batra* the Supreme Court held that the “prohibition against cruel and unusual punishment”, which is there in the Eighth Amendment of the United States Constitution, is also virtually present in our jurisprudence. The combined effect of all this was the evolution of the “rarest of rare” doctrine.

These changes in our laws reflect the evolving standards of fairness which mark the progress of a maturing democracy compatible with the dignity of the individual – the core constitutional value. The “rarest of rare” doctrine is now internationally appreciated by David Pannick in his book *Judicial Review of Death Penalty* and in *Treatise on The Death Penalty* by Roger Hood and Carolyn Hoyle.

“I agree... in cases which do not warrant the death penalty, the death penalty has been imposed.”

But I agree with your question that this principle of *Bachan Singh* has not been uniformly followed by the smaller Benches of the Supreme Court, and in cases which do not warrant the death penalty, the death penalty has been imposed, as noted in *Santosh Kumar Bariyar*. The Supreme Court noted that the decision of the Supreme Court in *Ravji* in 1996 was given without following the ratio in *Bachan Singh*. The Supreme Court held that the decision in *Ravji* was rendered *per*

incuriam [out of error or ignorance], and noticed that the decision in *Ravji* was followed by the Supreme Court in at least six other cases. The Supreme Court has also found in *Swamy Shradandananda* that a lot of subjectivity has crept into the process of sentencing in death sentence cases.

The requirement in the Bachan Singh case that the death penalty should be considered only if the alternative sentence (life imprisonment) is unquestionably foreclosed has, according to observers, been given short shrift by many judges of the Supreme Court. Should the prosecution give evidence in every case why the alternative sentence is not possible and whether the convict cannot be reformed?

Yes. The ratio in *Bachan Singh* requires that the prosecution must prove that the convict is a threat to society and is beyond repair. These two mitigating circumstances, apart from various others, which have been enclosed in *Bachan Singh* must be proved by the prosecution to be absent, and obviously the accused will have a chance to participate and rebut the evidence produced by the prosecution. The Supreme Court in *Bachan Singh* endorsed in paragraph 206 the mitigating circumstances suggested by the learned counsel appearing before it. So when the prosecution demands the death sentence, it must satisfy these tests. That is how application of the death sentence is restricted. But, unfortunately, this *Bachan Singh* ratio has not been followed by the Supreme Court in many cases – a fact noted by the Supreme Court itself in *Bariyar*.

MITIGATING CIRCUMSTANCES

The Bachan Singh case lists the mitigating factors to be taken into account by a judge while considering

the death penalty. Should the death penalty be ruled out even if one mitigating factor is present in a given case? According to observers, even Ajmal Kasab qualifies for two of these factors – age and ideology-driven crime.

About Kasab, I will not make any comment since the matter is *sub judice* before the Supreme Court. My interpretation of the *Bachan Singh* ratio is that while weighing the aggravating and the mitigating circumstances, the judge must give due weight to the presence of mitigating circumstances. If one mitigating circumstance is enough to indicate that the convict cannot be subjected to the death penalty, then that must weigh in the conscience of the judge.

You see, in our country the mitigating and aggravating circumstances are not statutorily indicated; they are judicially evolved principles on the basis of various decisions. While evaluating these circumstances, even one mitigating circumstance may be enough in a given situation for not giving the death penalty, since the death penalty is irreversible in nature.

Former President Pratibha Patil commuted death sentences for 35 convicts during her term, and left undecided mercy petitions filed by 16 convicts for the consideration of her successor. Can inordinate delay in deciding a mercy petition alone be a consideration for commuting a death sentence?

Yes it can. If you keep a person on death row for a very long time, that by itself is a sufficient penalty. The Supreme Court has held that delay in considering commutation is a ground for granting commutation.

The government seems to be following a policy of rejecting mercy petitions filed by those convicted in terrorist crimes. Some observers have warned that this may be counterproductive as in most cases the masterminds of terrorist attacks are either killed during encounters or elusive and untraceable; those

sentenced to death are either not aware of the terrorist designs of their masters or are brainwashed into committing terrorist acts.

In formulating policies for commutation there cannot be a straitjacket. Mere participation in a terrorist crime cannot [be the grounds to] deny a person equal rights along with other persons applying for commutation. Every case has to be judged on its individual facts. Straitjacketing or labelling such cases is certainly unreasonable. I do not know whether there is such a policy.

But legally there cannot be any predetermined policy of dealing with a case of commutation. The conduct of the person praying for commutation, the circumstances under which the crime was committed, his background, his past history as a criminal, all these things have to be considered. If there is a predetermined policy, that policy is unreasonable.

Many convicts also seem to suffer from varying degrees of mental retardation when they commit murder. Is it fair to subject such convicts who have subnormal behaviour symptoms to the death penalty? Should Indian standards of insanity be reviewed?

The standards of insanity fixed in our statutes under Section 84 of the Indian Penal Code and Section 328 of the CrPC require to be reconsidered in the light of the development of the law, especially in the United States – in *Penry vs Lynaugh* (492 U.S. 302) and *Atkins vs Virginia* (536 U.S. 304). These are very valid questions of human rights and can be a facet in the mitigating factors. The mitigating factors are never closed. This emerging concept of the mental state of the convict – he may not be insane but may be suffering from other kinds of mental derailment – is certainly a matter for consideration.

Those who are mentally retarded or a person with a deficient IQ – before imposing the death penalty, their cases require a more human consideration in view of the emerging jurispruden-

tial development in the cases I have already indicated.

ABOLITION DEBATE

Are you in favour of retaining the death penalty in the statute books? Or do you think the time has come to abolish it in India?

This is a very complicated issue. The death penalty is not only a legal issue, but also a complex social and ethical issue since you are dealing with human life. In *Bariyar*, the Supreme Court has already indicated that. All over the world opinion is gaining ground against the death penalty, and about 138 countries have opined in favour of abolishing it in different forms or limiting it to very few cases. In our country, when the death penalty was constitutionally upheld in *Jagmohan*, the court looked into the 35th Law Commission report submitted in 1967. The Law Commission, after considering various social aspects, considering the size of the country and various standards of morals prevailing among various communities, opined in favour of retaining the death penalty. The Supreme Court judgment [in *Jagmohan*] relied on this. In *Bachan Singh* also the same 35th Law Commission report was referred to. We have come a long way since 1967.

I think the time has come for the Law Commission to re-examine the issues once again, in their proper perspective and in the context of the emerging global trend where the number of countries abolishing the death penalty has gone up substantially from what it was in 1967. In view of the *Bachan Singh* judgment I cannot say today that the death penalty is unconstitutional, but freakish and random imposition of the death penalty is certainly unconstitutional.

FULL-LIFE SENTENCE

Do you think the death penalty accomplishes any sentencing aim better than any other penalty, including the full-life sentence?

I have some reservation about the

full-life sentence. The court cannot reconstruct a sentencing procedure which is not contemplated in the statute. The court can certainly exercise its discretion in deciding which of the alternative sentences prescribed in the statute should be imposed. A full-life sentence forecloses the convict's constitutional right of seeking remission or pardon from the President under Article 72 or from the Governor under Article 161. These rights of the convict flow from his fundamental right under Article 21.

Therefore the court in my view cannot, by devising a third method of sentencing procedure, create an obstacle in the operation of constitutional principles.

Does our criminal justice system, with its deep problems in the police, prosecution and system of criminal defence, inspire enough confidence in you so as to administer an extreme penalty such as the death penalty?

The criminal justice system in our country needs a substantial overhaul. Dissatisfaction with the system is well known. But that by itself cannot be a reason to outlaw the capital punishment provision. As I have said, at the time of imposing capital punishment the courts must be very circumspect and very careful in exercising their discretion. The courts must scrupulously observe the ratio in *Bachan Singh* and must eschew the principles of retributive justice. A system is as good or as bad as the persons who are manning it. The present system, if properly handled, can be quite effective. The difficulty is not with the system, but with those who are running it.

So would that make it difficult for a judge to impose an extreme penalty?

Whether the death penalty will be given or not is a matter which in our country is largely given to the discretion of judges on certain guided principles. The ratio of these "guided principles" must be followed. A judge is not a free agent while imposing the death penalty. His personal choice and opinion, the effect which the crime has

on his passion, must be set aside and the entire matter should be very objectively considered on the lines of the principles which have already been established.

Do you feel there is a possibility of miscarriage of justice in capital punishment cases in spite of safeguards such as mandatory High Court appeal and provision of separate sentencing hearing?

Miscarriage of justice has taken place, which has been noted in *Bariyar* and it's a case of grave miscarriage. It has only taken place because of improper perception, I am sorry to say, even of the learned judges of the Hon'ble Supreme Court.

“Death must only be imposed by a unanimous verdict by a Supreme Court Bench of at least three judges.”

What safeguards would you recommend in the short term to make the administration of the death penalty more secure in India?

Normally a case of death penalty ends its journey at the Supreme Court. I would recommend the Supreme Court to consider death penalty cases by a Bench of at least three judges, and if there is a split verdict among these three judges, then the death penalty should not be imposed. It can only be imposed on the basis of a unanimous verdict by a Supreme Court Bench of at least three judges.

How will you place the death penalty as a punishment in a democracy like India, which has its political ethos shaped by such enlightened souls as

Gandhi, Tagore, Ambedkar and Nehru?

These are very great names, but today mostly they are remembered by garlanding their portraits. Their principles are hardly followed. Just names will not make any difference. If we are to take our democracy to a more mature level, we must heed the principles which were laid down by these great souls of India. Especially when we call Gandhi the Father of the Nation, the death penalty is not compatible with his principles.

The Supreme Court in the Bachan Singh case opted for reform in the administration of capital punishment rather than abolition. Has the dictum in the case satisfactorily served the cause of equal justice and error-free and constitutionally secure administration of capital punishment in the last three decades?

Bachan Singh has been followed in the majority of the cases, but there have been some departures, which have been noted by the Supreme Court itself. Those departures are unfortunate. But, by and large, *Bachan Singh* has been followed.

Recently, the Supreme Court in a series of decisions, including your decisions, has admitted there is arbitrariness in the selection of penalty in capital cases. How do you see this increasingly visible evidence of subjectivity?

It is an unfortunate development in some cases. But, fortunately, the Supreme Court has now taken a different view of the development and pointed that out in *Swamy Shraddananda* and in *Bariyar*.

I feel that the law relating to capital punishment should be more structurally defined rather than keeping it at the stage of judicially evolved principles; that is, the mitigating and the aggravating circumstances can be structurally indicated and defined; and it would be the court's duty to consider them before awarding the death penalty. □

Innocent convicts

Exoneration of the innocent through DNA testing in the U.S. breaks the silence on the ills besetting the criminal justice system. BY USHA RAMANATHAN

The main routes to undeserved guilt are eyewitness misidentification, flawed forensics, police and prosecutorial pursuit of conviction and not justice, false witnesses, dearth of defence lawyers for the indigent, and false confessions.

THE first DNA exoneration in the United States took place in 1989. Since then, the Innocence Project, which is a network of an incredible band of people, including an extended network of lawyers, has been working to “exonerate wrongfully convicted individuals through DNA testing”. Since 1989, they record, 292 persons have been exonerated on the basis of DNA evidence; 17 cases involved inmates who had served time on death row and 15 were cases where people were charged with capital crimes but not sentenced to death. This, as is evident to anyone watching the criminal justice system, is an indication of a deeply flawed system that is creating an oxymoron: the innocent convict.

Exoneration is not acquittal. It is about wrongful conviction resulting in innocent persons spending long years in prison, sometimes with the spectre of the death sentence hanging over them.

Johnny Lindsey, 26 years in prison for “aggravated rape” until DNA proved his innocence. Earl Washington, 17 years in prison of which nine years were on death row, until DNA proved his innocence. Ronald Jones, 15 years before he walked out of death row to freedom, the DNA test having affirmed that his plea of innocence was genuine. James Gits, exonerated after 10 years in prison and 14 years on parole during which he was hounded by the legal restrictions and stigma that accompanies a convict of “aggravated sexual assault” wherever he goes. Victor Thomas, who spent 15 years, seven months and six days in prison before DNA testing proved that he was not a rapist. The list is long, and growing.

The exonerees’ stories speak about how the innocent are found guilty. The Innocence Project identifies six main routes to undeserved guilt.

MISTAKEN IDENTIFICATION

Eyewitness misidentification is a common feature of wrongful convictions. Amidst the growing body of literature on wrongful convictions is a 2010 publication titled *Tested: How Twelve Wrongfully Imprisoned Men Held Onto Hope*. Christopher Scott is one of the twelve. A man was murdered in the presence of his wife, and Christopher and his friend were picked up and put away despite the total absence of physical evidence that could link them to the murder. The wife of the victim was escorted into the room where Christopher was and asked whether he was the shooter. This was in 1997. Twelve years later, Alonzo Hardly made a confession while in prison serving sentence in another case that it was he and another man who had committed the robbery and murder for which Christopher was serving sentence.

Steven Phillips was put in a line-up to be identified by more than 20 women who were brought in by police personnel to identify a serial rapist. Steven Phillips had green eyes, and many of the victims had spoken of a blue-eyed attacker; but after collective discussion with the police, the victims began identifying him. It was 24 years before he was released, after the Innocence Project had his DNA tested and it was conclusively proven that he was innocent.

Brandon L. Garrett dug into court transcripts to uncover what had led to the wrongful convictions in the first 250 cases of wrongfully convicted people who were exonerated by DNA testing. In his 2011 book *Convicting The Innocent: Where Criminal Prosecutions Go Wrong*, he says, “The role of mistaken eyewitness identification in these wrongful convictions is now well-known. Eyewitnesses misidentified 76% of the exonerees (190 out of 250 cases).... I obtained trial materials for 161 or 85% of the 190 exonerees (out of 250) who were misidentified by eyewitnesses. Two related problems recurred: suggestive identification procedures and unreliable identifications.” And “with judges taking a hands-off approach, most police departments have few procedures and little formal training on eye-



ADRIAN DENNIS/SAEP

BRIAN CAPALOFF HOLDS a placard beside a cardboard cut-out picture of Linda Carty while standing on the fourth plinth in Trafalgar Square in London on September 10, 2009. Capaloff used his one-hour slot on the plinth to highlight Linda Carty's legal case. She is currently on death row in Texas. The fourth plinth project invites members of the public to stand and speak on Trafalgar Square's empty plinth.

witness identification, despite the importance of eyewitness identification in so many criminal cases”.

‘FLAWED FORENSICS’

Unvalidated and improper forensic science, as the Innocence Project experience reveals, leads to wrongful convictions. Forensic techniques often deployed in investigating crimes have not been the subject of rigorous scientific evaluations, and these include hair microscopy, fingerprint comparison, bite mark comparison, firearm tool mark analysis, and shoeprint comparison.

A 2009 report of the National Academy of Sciences on “Strengthening forensic science in the U.S.: The path forward” states that many of these methods are “supported by little rigorous systematic research to validate...

basic premises and techniques. There are other techniques that have been improperly conducted or inaccurately conveyed in trial testimony.” In some cases, the Innocence Project has found “forensic analysts have fabricated results or engaged in other misconduct”.

Garrett calls it “flawed forensics”, identified as recurring issues of reliability and validity. Then there are the problems that have been brought on by “analysts who concealed evidence, made errors in the lab, or failed to test evidence”.

Unveiling a shocking statistic, Garrett’s finding is that over half the exonerees, or 128 of them, had had invalid, unreliable, concealed or erroneous forensic analysis influencing the decision to convict in their cases.

Police and prosecutorial misconduct is known to be a route to wrongful

conviction. Michelle Moore, a public defender for Dallas County, has been tasked with reviewing the cases of convicted persons seeking exoneration, a process that is a consequence of the DNA statutes that have begun to be enacted since the opening years of this century in many States in the U.S.

In a conversation that is reproduced in *Tested* (2010), she is asked: “What about this job has most challenged your belief in the justice system?” Her response: “I have trouble with the Brady violation. That’s where either the District Attorney or the police department did not disclose evidence which could have proved the defendant innocent. The prosecution should by law have handed it over to the defence in the trial. We’ve got a lot of that... it’s just disheartening to think someone didn’t hand over exculpatory

Global trend

LATER this year the United Nations General Assembly is expected to reiterate the call for a global moratorium on the use of the death penalty it made previously in 2007, 2008 and 2010. The General Assembly resolutions provide an indication of the global trend towards the abolition of the death penalty.

The first resolution, in 2007, was adopted by a clear majority of 104 states in favour, 54 against and 29 abstaining. The next year, support for abolition increased (106 countries in favour), while resistance decreased (46 against, 34 abstentions). In the most recent vote, in 2010, the same pattern was visible – 109 countries voted in favour, while only 41 voted against and 36 abstained. India voted against the resolution in all the three years.

The situation today is dramatically different from 1945 when the U.N. was founded: only eight member-states had abolished the death penalty for all crimes then. As of June 2012, a total of 141, constituting over two-thirds of the countries in the world, are abolitionist in law or practice. Most have done so in the last three and a half decades. Only 16 countries had abolished the death penalty when Amnesty International started campaigning for its abolition in 1977.

Europe is almost death-penalty-free (Belarus is the sole exception), while in the Americas only some Caribbean states and the United States use the death penalty. Even in the U.S., 16 States have abolished the death penalty and another has imposed a moratorium on executions. Of the 54 countries in Africa, 38 are abolitionist in law or in practice. Central Asia and the Pacific region are also virtually death-penalty-free. West Asia, and South, South-east and East Asia are thus the “final frontier” for the abolition of the death penalty.

Many countries that retain the death penalty do not actually execute persons regularly. In 2011, only 21 countries did – the number has not exceeded 25 in the past five years. India is one of the countries that retains the death penalty but rarely executes people: there has been no execution for nearly eight years. Dhananjay Chatterjee, hanged in August 2004, is the only person to have been executed in India for nearly 15 years.

This is a far cry from the average of over 150 executions carried out every year in India in the early years after Independence or even the average of approximately 50 a year from 1965 to 1974. A further significant reduction to an average of 12 and

four executions a year took place in the decades of 1975-84 and 1985-94. A trickle of executions from 1995 to 1997 has virtually ended since.

The death penalty in India has little in relation to deterring or combating violent crime. As per the Home Ministry’s own statistics, there has been no visible increase in the levels of ordinary crime and violence despite the reduction of executions in India. Experience from other countries also suggests that abolition does not lead to any increase in violent crimes. The death penalty debate in India has now got mired in “terrorism” politicking.

At the General Assembly in 2010, five countries, including India’s neighbours Bhutan and the Maldives, changed their previous opposition and decided to support the call for a moratorium on the use of the death penalty. In South Asia, Nepal and Bhutan have already abolished the death penalty, while Sri Lanka and the Maldives are abolitionist in practice.

On the other hand, India stands with Afghanistan, Pakistan and Bangladesh in holding on to the death penalty.

*Bikramjeet Batra
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evidence – it’s disheartening to think that there was a win-at-all-costs attitude.”

Michelle Moore was referring to *Brady vs Maryland*, a 1963 decision of the U.S. Supreme Court. Brady was charged with murder along with Boblit. Brady did not deny that he had been involved in the murder but claimed that the actual killing was the work of Boblit. This would have changed the nature of the offence and the extent of the punishment. Boblit

had confessed that it was in fact he who had done the act of killing, but the prosecution withheld this evidence. The court ruled that withholding exculpatory evidence violated due process where the evidence could materially affect matters of guilt or punishment.

Yet “Brady violations” are par for the course. Richard Miles was 19 when he was picked up on charges of murder and attempted murder. He walked out of prison 15 years later after a prison

advocacy group, Centurion Ministries, found a police memo that identified the actual offender by name. This information had been withheld from the defence. In the 250 cases of exonerees that Garrett investigated, “in at least 22 cases, it emerged the police had failed to disclose forensic analysis helpful to the defence. In still other cases, it later emerged that informants who had denied receiving any kind of deal had in fact obtained a deal. In still other cases, prosecutors or police had

concealed evidence supporting the defendant's alibi or third-party guilt." The sorry image of the police and prosecutors as procurers of convictions, and not as enablers of a fair trial, runs through the evidence emerging from the exoneration experience.

SNITCH SYSTEM

The use of informants and jailhouse snitches to secure convictions has been in practice for so long that its origin eludes memory. It has been defended as a "necessary evil", but its reliability now stands challenged. In 2004, the Northwestern University School of Law Centre on Wrongful Convictions released a report entitled "The snitch system: How snitch testimony sent Randy Steidl and other innocent Americans to death row". According to it, from the 1970s when the death penalty was given constitutional endorsement by the Supreme Court and there had been 111 exonerations, 51 (45.9 per cent) involved the testimony of an informant or a snitch. For snitches, as Jim Petro, the former Attorney General of Ohio, writes in a co-authored book *False Justice: Eight Myths That Convict The Innocent* (2011), the incentives to testify have been consistent over decades: to reduce their sentence or speed up their release from prison. Actual killers snitch to incriminate others. And he quotes Robert Berke, who was a lawyer with the California Attorneys for Criminal Justice: "When you dangle rewards, furloughs, money, their own clothes, stereos, in front of people in overcrowded jails, then you have an unacceptable temptation to commit perjury."

The accused has a right to a lawyer, but that is no guarantor of competence or commitment. The "systemic lack of funding for indigent defence in the United States," Garrett observes, "leads to shoddy representation and miscarriages of justice."

FALSE CONFESSIONS

False confessions pose a serious threat to the credibility of the criminal justice system. Why would an innocent person admit to a crime he did not com-

mit? This is a fair question, and yet, the Innocence Project reports that about 27 per cent of the DNA exonerees confessed, made incriminating statements, or pleaded guilty. Duress, physical torture, fear of violence, exhaustion, incomprehension about their situation or about the law, and diminished capacity are now known to induce false confessions.

What is striking is the detail that is in these confessions. How did a person who was not involved in the crime know so much about it? Gísli Hannes Guðjónsson is a forensic psychologist in London. It was his expert testimony that formed the basis for reversing the convictions of the Guildford Four – Gerry Cohen, Paul Hill, Patrick Armstrong and Carole Richardson – who were said to have confessed to the Guildford pub bombings. Prof. Guðjónsson worked on the "Guðjónsson suggestibility scale", which tests the susceptibility of individuals to suggestibility during interrogation. Interrogative suggestibility results in false statements that are made not in an attempt to deceive, but to comply with what the person interrogated perceives the investigator wants him to say. Guðjónsson is a co-generator, with James MacKeith, of the term "memory distrust syndrome", in which a person may develop distrust in their memory of events and things, making them vulnerable to external sources to guide their memory. False memories get created, and innocent people may not merely confess to a crime but may provide details and specifics that they could not possibly have known. Garrett calls it "contaminated false confession".

DNA exonerations have established that confessions are often not dependable. Recording confessions, and the process of interrogation that leads to the confession, may provide the means to validate, or question the credibility of, confessions. Guðjónsson was awarded a CBE (Order of the British Empire) in 2011, and the citation refers to his role in establishing the innocence of the Guildford Four and the Birmingham Six – an admission by

the British government of fallibility that strains the credibility of the criminal justice system as now constituted. In another admission of fallibility, a Criminal Cases Review Commission was set up as an independent public body in March 1997 by the Criminal Appeal Act, 1995. The purpose is to "review possible miscarriages of justice in the criminal courts of England, Wales and Ireland", and the vision is "to enhance public confidence in the criminal justice system, to give hope and bring justice to those wrongly convicted, to contribute to reform and improvements in the law".

ALFORD PLEA

These errors and faults have made the innocent uncertain of the outcome of their trial, leading to a piquant situation in law. When the Memphis Three – Damien Echols sentenced to death, and Jason Baldwin and Jessie Misskelley Jr to long prison terms – were freed from custody in August 2011, after 18 years of incarceration and a sustained and public campaign, the key to their exit from the prison was the "Alford plea". This plea comes from a 1970 decision of the Supreme Court, *North Carolina vs Alford*, where the court held that "an individual accused of a crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime". That is, a person may plead guilty and bargain for a lesser offence – even while maintaining that he is innocent. As prosecutor Scott Ellington reportedly explained, the Alford plea would protect the state from being sued by the Memphis Three. They would continue to be guilty on record, even as they, and the various campaigns that had over the years proclaimed a miscarriage of justice that had happened on the basis of a confession from Jessie, maintained that they were innocent. Such are the uneasy compromises to which law has been drawn.

Sometimes it is too late. Carlos DeLuna was executed by the state in De-

American experience

In *Furman vs Georgia* (1972), the United States Supreme Court held death penalty statutes unconstitutional for the overly wide and unstructured discretion they conferred on courts. Thereafter, many States re-drafted these statutes, introducing guidelines and criteria based on Section 210.6 of the Model Penal Code (1962) authored by the American Law Institute (ALI), the premier and most prestigious body of American jurists. Consequently, in *Gregg vs Georgia* (1976), the Supreme Court reinstated the death penalty.

In India, inspired by *Furman*, Bachan Singh and other death-row prisoners challenged the constitutionality of the death penalty. The Supreme Court rebuffed the challenge but took a leaf out of *Gregg* and introduced the concept of mitigating and aggravating circumstances, which had their origins in the ALI's Model Penal Code. The *Gregg* and *Bachan Singh* courts believed that the discretion to impose the death penalty, following clear guidelines balancing the aggravating and mitigating circumstances, was sufficiently structured and obliterated arbitrariness and inconsistency. Subsequent events in America have shown that this belief was so misplaced that the ALI withdrew the death penalty provision in its Model Penal Code, and many of the judges who upheld the constitutionality of the death penalty expressed their regret for doing so.

Justice Harlan in *McGautha* (1971) had rejected the possibility of structuring discretion through guidelines:

“To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express characteristics in language which can be fairly understood and applied by

the sentencing authority appear to be tasks which are beyond present human ability.”

THE STEIKER REPORT

By the turn of this century, instances of arbitrariness and wrongful convictions and executions had become too numerous to ignore. In 2008, after sustained debate and deliberation among its members, the ALI commissioned a study on the death penalty by Prof. Carol Steiker (Harvard Law School) and Prof. Jordan Steiker (University of Texas Law School). The Steiker report reviewed the literature, case law and reliable data on the death penalty and investigated whether it was possible to administer a capital punishment system fairly. It focussed exclusively on contemporary administration of the death penalty and institutional obstacles to reform, studiously avoiding “moral and political arguments supporting or opposing the death penalty as a legitimate form of punishment”. It therefore recommended that the ALI reject a member's motion that the ALI was morally opposed to capital punishment.

The Steiker report noted established instances of miscarriages of justice and the likelihood of similar instances occurring in the future. It observed: “We can think of no other constitutional doctrine that has been so seriously questioned both by its initial supporters and later generation of justices who have tried in good faith to implement it.”

It concluded that the Supreme Court's “attempt to regulate capital punishment – largely on the model provided by the Model Penal Code – has been unsuccessful on its own terms. The guided discretion experiment has not solved the problems of arbitrariness and discrimination that figured so prominently in *Furman*;



nor has the court's regulation proven able to ensure the reliability of verdicts or the protection of fundamental due process in capital cases.”

The report attributed the failures in part to “the inherent difficulty and complexity of the task of rationalising the death penalty decision” and in part to the Supreme Court's “own conflicting doctrines”. On the basis of this report, the ALI withdrew the death penalty provision, Section 210.6, from the Model Penal Code in October 2009, 29 years after it had been used as the model for India's death penalty law.

The ALI was not alone in doubting its earlier support for the death penalty. Three of the judges (Powell, Stevens and Blackmun) whose votes in *Gregg* were crucial for reinstating the death penalty repudiated their former views and said that the death penalty experiment had failed and that the death penalty was a discredit to the law because of its arbitrary and unprincipled use. Justice Blackmun's retraction, articulated in a dissenting opinion in a Supreme Court case (*Callins vs Collins*) in 1994, is a powerful statement of disillusionment and sorrow that pre-empted many similar expressions by judges of the Indian Supreme Court in this century:

“From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavoured – indeed, I have struggled – along with a majority of this



JOEL HAWKSEY/AP

ANDRE DAVIS (LEFT), who was in prison for 30 years, with his father, Richard Davis, after being released on July 6 in Tamms, Illinois. His conviction was overturned on the basis of new DNA evidence.

court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavour. Rather than continue to coddle the court's delusion that the desired level of fairness has been achieved ... I feel morally and intellectually obligated to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations can ever save the death penalty from its inherent constitutional deficiencies. The basic question – does the system accurately and consistently determine which defendants “deserve” to die? – cannot be answered in the affirmative. It is not simply that this court has allowed vague aggravating circumstances to be employed ... relevant mitigating evidence to be disregarded ... and vital judicial review to be blocked.... The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution.”

Courts and governments world-

wide have tried and failed to lay down satisfactory and clear criteria eliminating arbitrariness, subjectivity and inconsistency from the death penalty. To mitigate this failure, and minimise the number of unjust executions, countries like the U.S. have introduced a labyrinthine and multi-layered appeals structure that on average takes 15 to 25 years to complete and costs about \$25 million a person.

HIGH COST

A 2011 study done jointly by senior U.S. Court of Appeals Judge Arthur Alarcón and the Loyola Law School in Los Angeles shows that the death penalty has cost the State of California \$4.6 billion since 1978, during which period the State executed 13 persons at an average cost of \$354 million each. In spite of such rigorous scrutiny of death penalty verdicts, such systems too are vulnerable to mistakes on a gigantic scale. Look at the recent revelations about the execution of Carlos DeLuna, who was innocent of the crime but guilty of having the same name, a similar appearance and living in the same neighbourhood as the man who had committed the crime for which DeLuna was executed.

Governor George Ryan of Illinois, a fervent supporter of capital punishment, ordered an inquiry when confronted with cases of wrongful conviction. On seeing the results, he commuted the death sentences of 167 prisoners. Thirty-three of them were represented at trial by lawyers who were later disbarred or at some point suspended from practice, and 17 were subsequently exonerated on the basis of DNA evidence.

If it costs so much to maintain a system that is still so inevitably flawed, and that is quite dispensable, as evidenced by two-thirds of the world's countries that have abolished the death penalty, one might as well save the money – and the lives.

Yug Mohit Chaudhry

ember 1989. He protested until the very end that he was innocent and it was Carlos Hernandez that they wanted. In 2012, James Liebman from the Columbia Law School and his students released a 430-page report, “Los Tacos Carlos: Anatomy of a wrongful execution”, establishing through investigation and beyond doubt that the State of Texas had executed one Carlos in place of another.

Exoneration through DNA testing has irreversibly altered perceptions about the criminal justice system. Yet, as Barry Sheck says in his recent blog, “Unfortunately, DNA testing is not a panacea for the inadequacies of the criminal justice system because only 5% of serious felony cases have any biological evidence where DNA testing could be used to solve the crime. The other 95% of prosecution turn on much less reliable evidence.” He cites the case of Troy Davies, where no DNA evidence was available but substantial evidence came to light subsequent to his trial indicating innocence. He was executed by the State of Georgia last year.

These are narratives of fallibility and innocence.

The Indian experience is replete with these problems – eyewitness misidentification, flawed forensics, police and prosecutorial pursuing of conviction and not justice, false witnesses, dearth of defence lawyers for the indigent, false confessions and miscarriages of justice. The breakdown of the criminal justice system is common knowledge, yet wrongful convictions have not detained us. Instead, it is a preoccupation with better conviction rates that drives policymaking, as the Malimath Committee report illustrates.

The American, and British, acknowledgment of the injustices that the system has wrought, including execution of the innocent, holds lessons that only deep cynicism and a profound disrespect for life and justice will allow us to ignore. □

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Futile penalty

Anti-terrorism laws create cultures of impunity, making it a route fraught with peril for the imposition of the extreme penalty of death. **BY USHA RAMANATHAN**

There is a problem that dogs all extraordinary laws: they dilute standards and norms that have been developed over time and through involved processes of thought and practice. Anti-terrorism laws are no exception.

WHEN the Terrorist and Disruptive Activities (Prevention) Act, or TADA, was enacted in 1985, it was intended to be in force for two years as an extraordinary measure. During that period, terrorist activities were expected to be brought under control. That, of course, did not happen. So the life of this law was extended, time after time, until 1995, when it became a political embarrassment because of the excesses that were practised, especially by the police, under its shelter. The Prevention of Terrorism Act (POTA), enacted in 2002 following the attack on Parliament House on December 13, 2001, met an early death when the cynical abuse of the law against political adversaries became manifest.

TADA and POTA provided for the death sentence, and there are those who are still on death row for convictions under these laws. The death sentence in anti-terrorism laws, however, rests on an uneasy premise. If the death penalty in anti-terrorism laws is to have any meaning, it must deter others from committing similar crimes. Experience, however, shows something different. Over the years, it has proved difficult to define terrorism. The law makes it clear that it is a political offence – it is politics that makes the distinction between murder in ordinary law and murder when committed as part of a terrorist act. This has meant that those who face the penalty of death tend to acquire the sheen of martyrs. The conviction based on a confession, the refusal to appeal, and the bravado displayed by Harjinder Singh Jinda and Sukhdev Singh Sukha, convicted for the

assassination of General Arun Vaidya, are illustrative. Suicide bombers and the cyanide capsule are evidence that the penalty is unlikely to have a deterrent effect. It is an aspect of anti-terrorism laws that certain sections of the polity get identified as aggressors and as working against the state. It is no coincidence that those accused in the Godhra train burning case have been charged under POTA, while those accused of the carnage in the days that followed are being tried under regular criminal law.

Anti-terrorism laws have demonstrably exacerbated the sense of wrong and of alienation, against which communities that feel targeted have been speaking out. Protests in Punjab against the carrying out of the death sentence on Devinder Pal Singh



Bhullar (Bitta bomb attack case) and Balwant Singh Rajoana (Beant Singh assassination case), or by sections of the Kashmiri people in relation to Afzal Guru (Parliament House attack case) or those in Tamil Nadu against the execution of the assassins of Rajiv Gandhi are expressions of communities, and their voices need to be heard and interpreted to understand what the death penalty for terrorist acts is actually achieving.

It also seems a futile penalty. The roll call of people convicted in terrorist offences consists largely of marginal players who would have little effect on the ending, or even the lessening, of terrorism. Nalini, Perarivalan, Murugan, Santhan (convicted in the Rajiv Gandhi assassination case, they were tried under the anti-terrorism law too, but only convicted under the Penal Code), Afzal, Rajoana and Bhullar – none of them could have turned the tide against terrorism. So, too, Ajmal Kasab. Kasab's was a horrific crime, no

one would question that. Yet, other than as an act of retribution, what other purpose would Kasab's execution serve? How will it change the nature of terror? It is also wise and necessary to pause and consider what it means when we make the state an instrument of retribution.

There is a problem that dogs all extraordinary laws: they dilute standards and norms that have been developed over time and through involved processes of thought and practice. Anti-terrorism laws are no exception.

Among the deviations TADA and POTA have made from regular criminal law is making confessions to a police officer admissible in evidence. Torture, coercion and deaths in custody are disturbingly common phenomena. In making confessions admissible, excesses by investigators begin to be tolerated as a political necessity, and investigations become peremptory. The Evidence Act recognised this when it made confes-

sions to a police officer inadmissible as evidence.

Bhullar was accused, and tried, in connection with a remote-control bomb attack on a cavalcade, which left nine persons dead and 29 injured. He was sentenced to death by a TADA court. Three judges heard his appeal in the Supreme Court. It was a split verdict, with the majority upholding the conviction and sentence of death. The conviction was based on a confession that was supposedly made to the police officer investigating the case. This was later retracted, but the two judges concluded that the confession was voluntary and could be relied upon even without corroboration.

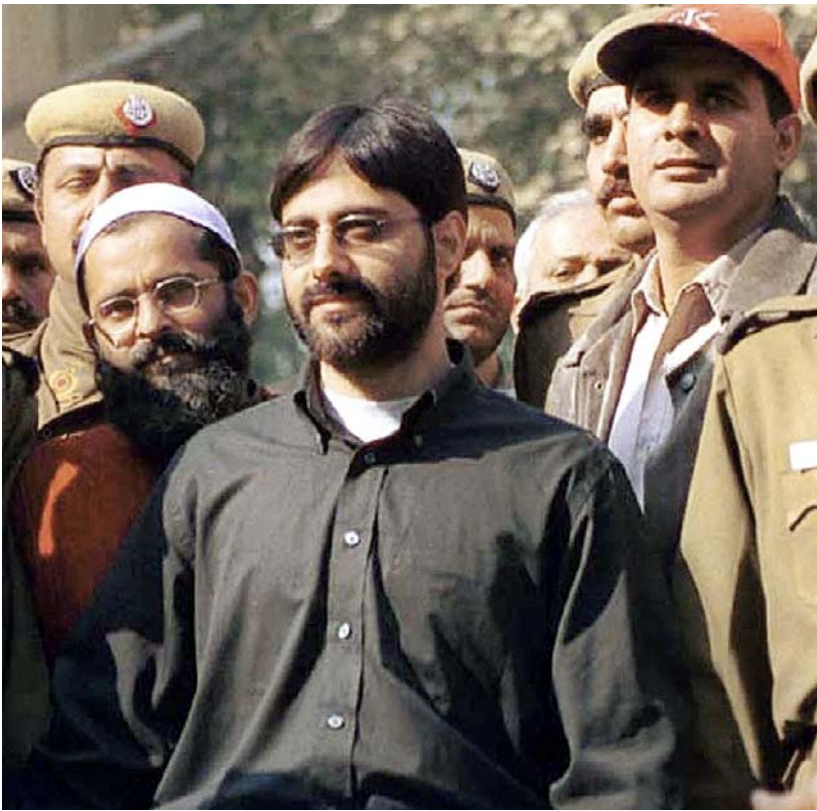
Justice M.B. Shah did not agree. His judgment reveals that there was no independent corroboration of the confession which Bhullar was claimed to have made. In the confessional statement, it was said that he had hired rooms at Sahibabad, Jaipur and Bangalore. No neighbours deposed, nor did the landlords; no incriminating articles were found. No one was produced to identify him in connection with any of the events mentioned in the retracted confessions, nor were records or documents produced that could corroborate the confession. The abdication of the role of the investigator is plain. Why did the law enforcement agencies not follow up on Bhullar's alleged confession?

The July 9, 2011, edition of *Open Magazine* carried a report on a writ petition that Bhullar's wife and the Delhi Sikh Gurudwara Management Committee had filed in May 2011, which tells a tale of abduction and torture. Bhullar was a young teacher in an engineering college. His wife maintains that it was his persistent questioning of the authorities about the whereabouts of the 42 students who had gone missing that provoked the ire of the police. When S.S. Saini, described as a "notoriously brutal SSP [Senior Superintendent of Police]" was attacked with a remote control bomb, Bhullar was listed as an accused. When he was not found in a raid on his house, the police, it is claimed,



REPRESENTATIVES OF THE Sikh

community meet UPA chairperson Sonia Gandhi on February 6, 2011, at her residence in New Delhi seeking clemency for Devinder Pal Singh Bhullar (above).



AFZAL GURU (LEFT), S.A.R. Geelani (centre), and Shaukat Hussain, accused in the Parliament House attack case, being brought to the special court in New Delhi on December 18, 2002, when the verdict was decided.

“abducted his father and maternal uncle”, who were “tortured to death in police custody”. Bhullar’s engineer friend, Balwant Singh Multani, it is averred, was “abducted at the same time and detained in police custody by Saini... and tortured to death”. Bhullar’s father-in-law, too, is alleged to have been picked up, detained, tortured over one and a half months, leaving him “mentally disturbed and barely capable of walking”.

These are facts and circumstances that are verifiable. Yet, there is a deathly silence on these grave allegations. In the meantime, Bhullar’s clemency petition has been rejected by the President at the instance of the Ministry of Home Affairs. Why are the shortcomings of the investigations and the events and allegations in the writ petition and reports not stirring the Ministry to look within and assess how the anti-terrorism law has been used? The

Supreme Court has asked the government how delays, changed political conditions, and the possibility that the prisoner has reformed in the intervening period had impacted the mercy plea, if indeed it had. Will it need the court to direct an investigation into the circumstances surrounding the various times and events in this episode?

India has had over 25 years of experience with anti-terrorism laws, and we are yet to assimilate the lessons they teach. It is now indisputable that extraordinary laws encourage excesses.

The years of heightened military activity in Punjab, when TADA was enacted as a tool in the hands of the law-enforcing agencies, saw very few prosecutions and even fewer convictions. What it did see was a profusion of cases of custodial torture and death, illegal detention, encounters and disappearances. *Reduced to Ashes: The*

Insurgency and Human Rights in Punjab documents hundreds of individuals – identified by name and accompanied by sketches of their personal and political backgrounds – who were the victims of “police abductions leading to illegal cremations”. Jaswant Singh Kalra, who, with Jaspal Singh Dhillon, released copies of the official document, which showed “that security agencies in Punjab had secretly cremated thousands of bodies after labelling them as ‘unidentified, unclaimed’ was himself ‘disappeared’ even as his case was in the High Court, having filed a petition asking for an investigation into the matter of illegal cremations. It was a period when there was a deepening of impunity.”

The Parliament House attack case, too, is situated in a maze of curious circumstances and unanswered questions. The five attackers who entered the precincts of Parliament House were slain and their identity and antecedents continue to be shrouded in silence. Afzal Guru’s alleged confession and his answers to the trial court’s questions say completely different things. Both are reproduced in Nirma-langshu Mukherji’s *December 13: Terror over Democracy*.

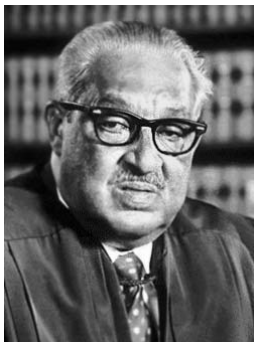
It is now on record that Assistant Commissioner of Police Rajbir Singh, an encounter specialist, made Afzal Guru “confess” before a phalanx of television cameras. It is also now known that the ACP reprimanded Afzal Guru for having said that S.A.R. Geelani, his co-accused and a university teacher, had no part in the crime to which he was confessing, and that he directed the media not to telecast that part of the statement. The tragedy is that the media complied – until 100 days after the attack – by which time the public mind had already condemned Afzal Guru and Geelani. The death penalty that Afzal Guru faces emerges from this maze. The problem is that anti-terrorism laws, like other extraordinary laws, create cultures of impunity, making it a route fraught with peril for the imposition of the extreme penalty of death. □

Uneven balance

Examples abound of “a pattern of confusion, contradiction and aberrations” in judgments in death penalty cases. BY YUG MOHIT CHAUDHRY

Justice P.N. Bhagwati held that the death sentence was discriminatory and “has a certain class complexion or class bias inasmuch as it is largely the poor and the downtrodden who are the victims of this extreme penalty”.

THE death sentence, passed in dusty courtrooms after arcane legal arguments, is executed in the utmost secrecy behind high prison walls at the crack of dawn. Though the right of the state to punish by killing is debated intensely, the process that takes prisoners from the dock to the scaffold remains shrouded in secrecy. Since executions are done in our names, we need to know more about them and make informed choices. In *Furman* (1972), where the United States Supreme Court struck down the death penalty, Justice Thurgood Marshall said that if citizens were fully informed, they would find capital punishment shocking, unjust and unacceptable. In the same case, Justice Potter Stewart held that facing the death sentence was as unusual and cruel as being struck by lightning. One does not know whom it will strike; it cannot be anticipated or guarded against. *Harbans Singh's* case (1982) vividly illustrates this. In October 1975, the Allahabad High Court confirmed the death sentence imposed by the trial court on Jeeta Singh, Kashmira Singh and Harbans Singh for playing equal roles in murdering four members of a



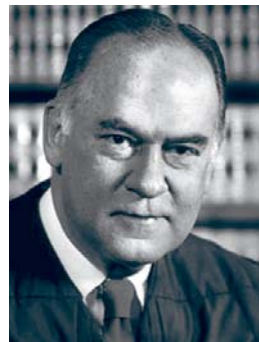
JUSTICE THURGOOD MARSHALL (left) of the U.S. Supreme Court, who believed the death penalty to be unjust, and Justice Potter Stewart, who held that facing the death sentence was as unusual and cruel as being struck by lightning.

family. Each of them challenged their sentence separately before the Supreme Court. While Jeeta Singh's appeal was dismissed by a Bench of three judges (Justices Y.V. Chandrachud, V.R. Krishna Iyer and N.L. Untwalia) and he was hanged, a different Bench of two judges (Justices M. Fazal Ali and P.N. Bhagwati) commuted Kashmira Singh's death sentence to life imprisonment. Another Supreme Court Bench dismissed Harbans Singh's appeal and review petition though he had sought equal treatment with Kashmira, and he was scheduled to be hanged with Jeeta Singh. But he appealed again. This time, the court stayed his execution and recommended presidential clemency, which was granted.

Examples abound of judicial error in death penalty cases where persons have been wrongly convicted or sentenced to death. In *Bachan Singh* (1982), Justice Bhagwati, a former Chief Justice of India, said that the Supreme Court had been awarding death penalties “arbitrarily and freakishly”. Was he wrong?

The Supreme Court's varied interpretation of what constitutes “rarest of rare” makes Justice Stewart's comparison of the death sentence to a lightning strike all too apposite. The court's rules of prudence and practice have been breached so often that it is anyone's guess whether they will or will not be applied in any particular case. The rampant uncertainty has made death sentencing a game of Russian roulette. Justice Bhagwati said that “judicial ad hocism or judicial impressionism dominates the sentencing exercise and the infliction of death penalty suffers from the vice of arbitrariness and caprice”. Though made in a dissenting judgment, these remarks have been reiterated by subsequent unanimous judgments.

In *Santoshkumar Bariyar* (2009) and



Aloke Dutta (2007), after examining judgments in death penalty cases over the past two decades, the court “admitted the failure on the part of this court to evolve a uniform sentencing policy in capital punishment cases and conclude as to what amounted to *rarest of rare*”. *Bariyar* noted that a “survey of the application of *rarest of rare* doctrine in various courts will reveal that various courts have given their own meaning to the doctrine”. Such admitted disparity, subjectivity and inconsistency in applying the rarest of rare doctrine render the court’s death-penalty jurisprudence constitutionally infirm.

ABERRATIONS

Examples also abound of “a pattern of confusion, contradiction and aberrations” in judgments in death penalty cases. There is a time-honoured principle of not confirming the death penalty if one of the judges on the Bench or any of the lower courts had either acquitted the accused or sentenced him to life imprisonment. A case where a judge either acquits the accused or awards a lesser sentence cannot “unquestionably” be a rarest of rare case where a lesser sentence is not an option. However, in *Krishna Mochi* (2002) and again in *Bhullar* (2002),

the Supreme Court confirmed the death sentence despite one of the judges having acquitted the appellants. In *Kheraj Ram* (2003) and *Satish* (2005), the Supreme Court imposed the death sentence on persons acquitted by the High Courts. In *Sattan* (2009), the Supreme Court enhanced the sentence to death 15 years after the High Court had commuted it. Out of deference to principle and precedent, the court ought to have explained why it repudiated the aforementioned principle ruling out the death penalty in such cases.

A study of Supreme Court judgments in death penalty cases from 1950 to 2006 (“Lethal lottery: The death penalty in India” (2008)) by Amnesty International and the People’s Union for Civil Liberties (PUC) shows that cases in which the death penalty was imposed are often indistinguishable from those in which it was commuted. Nothing has changed since then. Dharmendrasingh (2002) and *Kheraj Ram* (2003), doubting their spouses’ fidelity and the parentage of their offspring, killed their wives and children. The former was sentenced to life imprisonment, the latter to death. *Vashram* (2002) and *Sudam* (2011) murdered their wives and children because they were being nagged.

The former’s sentence was commuted, while the latter was sent to the gallows. Nagging was decreed a mitigating circumstance and sustained provocation in only one case though it was the cause of both murders.

In two cases of child sacrifice, the court commuted the death penalty in one case but upheld it in the other. It commuted the death penalty in *Damu* (2000), where three children were killed, and upheld it in *Sushil Murmu* (2004), where one child was killed. The grounds for commutation – that the accused acted out of ignorance and superstition – applied squarely to *Murmu* as well, which was also less heinous a case than *Damu*. In each of these comparisons, the court ignored its own precedent and imposed the death penalty in the subsequent case.

Mohan (2008) was sentenced to death for the rape and murder of two minor girls, having earlier been convicted twice of raping other minor girls. *Sebastian* (2010), described as a violent paedophile with previous convictions for molestation, kidnapping, rape and murder of a young child, was given life imprisonment for yet another rape and murder of a child. There is little to differentiate the case of *Sebastian* from *Mohan*’s, except the composition of the Bench. While Justices K.G. Balakrishnan and S.B. Sinha commuted all death sentences for child rape and murder, Justice A. Pasayat upheld or imposed the death penalty in every such case even when lower courts had acquitted the accused or commuted the sentences.

PERSONAL PREDILECTIONS

Satish (2005), convicted of raping and strangling a five-year-old girl, was sentenced to death by Justice Pasayat’s Bench even though the case was based on weak circumstantial evidence and the High Court had acquitted him. *Rahul* (2005), convicted of the rape, sodomy and murder of a four-year-old girl, was given life imprisonment by Justice Balakrishnan’s Bench. In *Swamy Shradananda 2* (2008), the court admitted: “The truth of the matter is that the question of death penalty is



S. SUBRAMANIAM

ACTIVISTS OF AMNESTY International staging a protest demanding the abolition of death penalty, in New Delhi on October 10, 2008.

not free from the subjective element and the confirmation of death sentence or its commutation by this court depends a good deal on the personal predilection of the judges constituting the Bench.”

The death sentence becomes more indefensible when a majority of such cases are assigned to two or three out of the 14 or so Benches of the Supreme Court. This creates a lottery, where the mere presence or absence of a particular judge gives the convict a significantly better or worse chance of survival, statistically, regardless of the evidence. A comparison of three judges (derived from judgments reported in *Supreme Court Cases*) clarifies the importance of a judge’s personal predilections in death-penalty adjudication.

Justice Pasayat’s conviction rate of about 73 per cent was significantly higher than the collective conviction rate (19 per cent) of other judges during his tenure. Thus, a case not allotted to Justice Pasayat’s Bench was about four times more likely to escape capital punishment. A death-penalty case had an almost equal chance of being heard by Justice Pasayat’s or Justice Sinha’s Bench, but the convict’s chances of living were almost 100 per cent if his case was allotted to the latter instead of the former. A prisoner’s chances of living were better by more than 50 per cent if his case was allotted to Justice Balakrishnan’s Bench rather than Justice Pasayat’s Bench. Would a death sentence appellant not be justified in asking, “Am I to live or die on the basis of the constitution of the Bench and not the evidence in the case? Is that justice according to law?”

A.R. Blackshield’s study (1972-1976) shows similar if not worse disparities among judges. There can be little doubt that Justice Bhagwati was right when he said “whether a person shall live or die depends very much upon the composition of the Bench which tries his case and this renders the imposition of [the] death penalty arbitrary and capricious”. This becomes self-evidently true on comparing Justice V.R. Krishna Iyer’s



C.V. SUBRAHMANYAM



K.V. SRINIVASAN



RAJEEV BHATT

JUSTICES A. PASAYAT, S.B. Sinha and K.G. Balakrishnan. It has been observed that the mere presence or absence of a particular judge gives the convict a better or worse chance of survival, statistically, regardless of the evidence.

	Justice A. Pasayat	Justice S.B. Sinha	Justice K.G. Balakrishnan
Percentage of total DP cases in SC	29	23	12
Upheld DP	12	0	6
Enhanced LI to DP	2	0	0
Converted acquittals to DP	2	0	0
Total DPs awarded	16 out of 22 cases	0 out of 17 cases	6 out of 13 cases
Conviction rate	73%	0%	46%
Per incuriam DPs	11 persons (5 judgments)	0	0
Acquittals in DP cases	0	3	1

Abbreviations: DP: death penalty; LI: Life imprisonment; SC: Supreme Court

comments on the sacredness of life, the ever-present possibility of redemption in the worst type of criminal, and the barbarity of the death sentence with the regret expressed by some judges after the *Bachan Singh* judgment “unfortunately” prevented them from passing more death penalties. A case in point is *Amrik Singh* (1988).

As we saw in *Harbans Singh*, and as is becoming clearer by the day, the imposition or commutation of the death penalty depends less on the evidence than on the personal predilections of the judges. *Md. Farooq* (2010) and *K.V. Chacko* (2001) chronicle the “swinging fortunes” of an accused sentenced to death by one court, having it commuted by another, and being acquitted by a third. Such glaring inconsistencies in death-penalty judgments have caused disquiet among not only litigants, lawyers and

academics but also judges themselves. *Aloke Dutta* (2007) contains a poignant expression of sorrow and helplessness: “We have also noticed hereinbefore that different criteria have been adopted by different benches of this court, although the offences are similar in nature. No sentencing policy in clear-cut terms has been evolved by the Supreme Court. What should we do?”

Underlying such anguish is a realisation that the court has treated similarly situated convicts differently and thereby violated the fundamental rights it was expected to protect:

“Equal protection clause ingrained under Article 14 [of the Constitution] applies to the judicial process at the sentencing stage. We share the court’s unease and sense of disquiet in *Swamy Shraddananda (2)* case and agree that a capital sentencing system which re-

Legal aid

THE vague and subjective nature of the death-penalty criteria and the complexity of such cases render inaccessibility to high-quality lawyers potentially fatal. Usually the records in death penalty cases are voluminous, and trials last for six to nine months. In most places (except Delhi), legal-aid lawyers are paid Rs.500 to Rs.2,000 for a death penalty case in the trial court, which is about the same for proceedings in High Courts, and Rs.4,000 for a Supreme Court appeal. These fees, which have been stagnant for decades, will not cover conveyance and miscellaneous expenses.

Legal-aid rules require that senior lawyers be appointed for all possible death penalty cases, but this is rarely done. Raw, inexperienced juniors are roped in for cases that would make seniors baulk. However, in the case of Mohammed Ajmal Amir Kasab, the lone surviving terrorist of the 26/11 attack on Mumbai, where international attention made due process and the appearance of justice crucial, these rules were suddenly discovered and applied vigorously. Consequently, the



SEBASTIAN D'SOUZA/AP

THE LEGAL-AID FEES paid to the lawyers of Ajmal Kasab (in picture) per day exceeded the total legal-aid remuneration payable for entire death penalty cases.

legal-aid fees paid to Kasab's lawyers per day exceeded the total legal-aid remuneration payable for entire death penalty cases. Not surprisingly, appellate courts remand such cases back to trial courts because the prisoner was not defended in any meaningful way. But more such cases fall through the cracks.

In the nine years from January 1, 2000, to December 31, 2009, the Supreme Court gave the death sentence in 30 cases. At least 14 of them were defended on legal aid, and

many more had legal-aid lawyers at the earlier stages. Twelve of the 14 prisoners wrongly sentenced to death in the Ravji cases, including Ravji himself, who has been executed, were represented on legal aid.

In the U.S., where legal aid is more organised and better remunerated than in India, Justice Ruth Ginsburg of the U.S. Supreme Court observed that she had never seen a death case coming in appeal to the Supreme Court where the defendant was well represented at the trial. It is hardly surprising, therefore, that most cases of miscarriage of justice, wrongful convictions and executions have been defended at some stage on legal aid. Prisoners facing the death sentence who are handicapped by poverty are doomed *ab initio* by a system that pays legal-aid lawyers a pittance for their work.

The Constitution has promised citizens equality before the law and protection from arbitrariness, which means that their cases will be treated alike regardless of their financial capacity. Courts are required to uphold this promise for it is the bedrock of judicial legitimacy. Since there is no consistent and fair way to award this death penalty, it must be abolished.

Yug Mohit Chaudhry

sults in differential treatment of similarly situated capital convicts effectively classifies similar convicts differently with respect to their right to life under Article 21.... In the ultimate analysis, it serves as an alarm bell because if capital sentences cannot be rationally distinguished from a significant number of cases where the result was a life sentence, it is more than an acknowledgement of an imperfect sentencing system. In a capital sentencing system if this happens with some frequency there is a lurking conclusion as regards the capital sentencing system becoming constitutionally arbitrary" (*Bariyar*, 2009).

Arbitrariness becomes inevitable

wherever the death sentence is awarded on subjective and vague criteria such as whether a case is the rarest of rare and whether it shocks one's conscience. Ultimately, the decision is largely based on personal predilections and beliefs thinly disguised as legal doctrine.

'CLASS BIAS AND COLOUR BAR'

In addition to being arbitrary, the death penalty is also discriminatory. "Capital sentence perhaps has a class bias and colour bar," declared Justice Krishna Iyer (*Rajendra Prasad*, 1979). He said that the death penalty was reserved for crimes committed by the poor, while white-collar crimes which

were more damaging to the public weal (adulteration, financial scams, environmental degradation, and so on) got exempted. Justice Bhagwati echoed these views, holding that the death sentence is discriminatory and "has a certain class complexion or class bias inasmuch as it is largely the poor and the downtrodden who are the victims of this extreme penalty" (*Bachan Singh*, 1982).

A nodding acquaintance with the criminal justice system will show that poverty is as significant a factor in the death sentence as the nature of the crime or the quality of the evidence. □ *Yug Mohit Chaudhry is a lawyer practising in the Bombay High Court.*

Hanging on theories

Data published by the government over the years belie the claim that the death sentence deters murder more than life imprisonment does. BY YUG MOHIT CHAUDHRY

With life imprisonment extending to the convict's full natural life at the option of the state, and death sentence serving no additional purpose, it is time India reconsidered a practice abolished by 66 per cent of the countries.

IN *Shashi Nayar vs Union of India* (1992), the last reported challenge to the death penalty, it was argued that "capital punishment does not serve any social purpose, and in the absence of any study, the barbaric penalty of death should not be awarded to any person as it has no deterrent effect". Five Supreme Court judges held that this argument had been considered and rejected in *Jagmohan Singh* (1973) and in *Bachan Singh* (1980), and that since they agreed with those judgments, reconsideration in the case was unnecessary. The court relied upon the Law Commission's 35th Report (1967) and quot-

ed its recommendations: "Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment."

The petitioner argued that this report was very dated, that conditions in India had changed considerably since 1967, and that as there was "no empirical study before the court to show that the situation which prevailed in 1967 is still continuing", the court should reconsider the matter. Rejecting this argument, the court said:

"We do not find any merit in this submission. The death penalty has a deterrent effect and it does serve a social purpose. ...Further, a judicial notice can be taken of the fact that the law and order situation in the country has not only not improved since 1967 but has deteriorated over the years and is fast worsening today. The present is, therefore, the most inopportune time to reconsider the law on the subject."

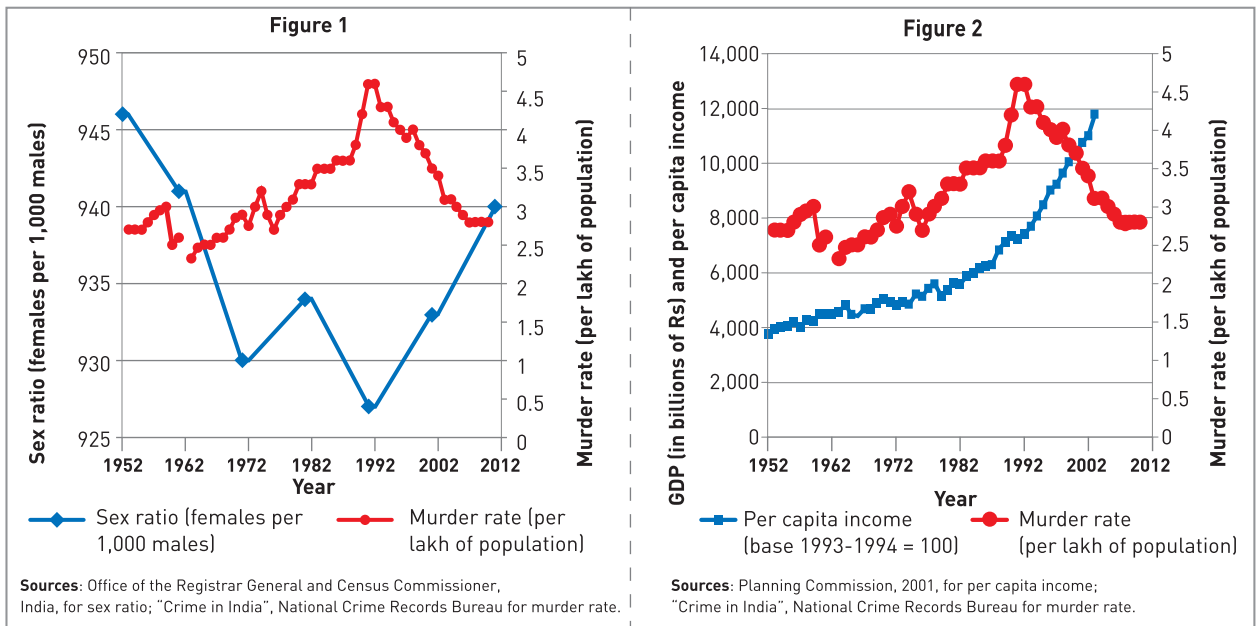
Contrary to popular belief, and even Supreme Court dicta, the murder rate has declined consistently in the past 20 years. It is now at its lowest levels since 1970. There has also been a drastic decline in the award of capital punishment since 1980. The corresponding decline in the rates of murder and execution raises questions about the justification for the use of capital punishment and the validity of the claim that it deters murder more than life imprisonment does.

Three principles must inform any discussion on the justifiability of capital punishment. First, if two types of punishment are available for a crime, both serving the same purpose with no additional benefits, the less harsh punishment must be preferred, from a humane, moral and also utilitarian perspective. Since life imprisonment is always prescribed as an alternative to the death penalty, the latter can be justified only if it is shown to have so much more social utility than life imprisonment as to vindicate killing a person. Second, killing human beings needs



SHANKER CHAKRAVARTY

ACTIVISTS OF THE People's Union for Democratic Rights protest against the death sentence of Dhananjay Chatterjee, in front of the NHRC headquarters in New Delhi in August 2004.



strong justification, and the onus lies on those defending capital punishment. Third, arguments justifying the death sentence must be based on data and objective analyses rather than on subjective opinions and impressions.

TWO CLAIMS

The deterrent theory of punishment makes two claims: (i) that crime is deterred by severe punishment (which we shall hereafter call the "positive claim") and (ii) its corollary, that the absence of severe punishment encourages crime (which we shall hereafter call the "negative claim"). The deterrent theory of punishment is one of the main planks in defence of capital punishment. Its adherents argue that capital punishment deters murder more than life imprisonment does and that it should, therefore, be retained (the "positive claim"). Conversely, they also claim that diminishing the use of capital punishment reduces the deterrence effect and causes murder rates to rise *ceteris paribus* (the "negative claim"). Both claims are amenable to proof, and it is therefore necessary to examine each of them individually in the light of available evidence.

To date, no Indian study has substantiated the "positive claim", which

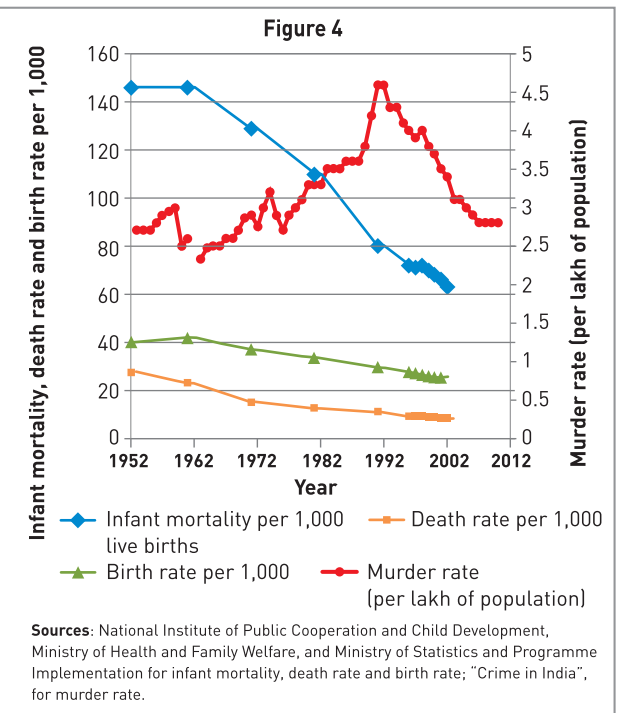
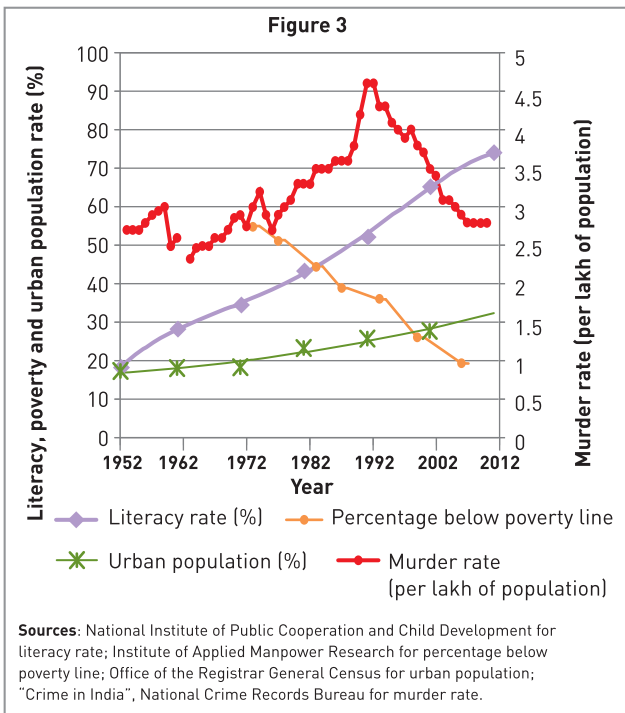
is largely based on individual impressions and intuitive reasoning. However, Mohan Kumaramangalam's study, referred to in Justice P.N. Bhagwati's dissenting opinion in *Bachan Singh*, has adduced evidence contradicting the positive claim that the death penalty deters murder more than life imprisonment does. The study shows that in the former state of Travancore and Cochin, a total of 962 murders were committed between 1945 and 1950 when a moratorium on the death penalty was in force, whereas a total of 967 murders were committed between 1951 and 1956 when the moratorium had been lifted. The study is particularly important because it shows that even when the death sentence was commonly employed as the main punishment for murder, it had no additional deterrent effect on the murder rate. It can, therefore, be inferred that if the heavy use of the death sentence in the pre-*Bachan Singh* era did not deter murder, the use of the death penalty at a fraction of its former frequency today cannot have any deterrent effect. National crime records confirm this inference.

As for the negative claim that reduction in the number of executions causes the murder rate to increase, there are no Indian studies supporting

it, although there is empirical data on the two issues it raises, namely the number of executions and the murder rate.

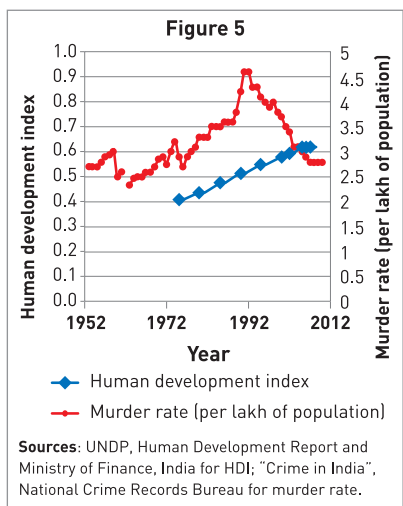
'SPECIAL REASONS'

The Code of Criminal Procedure (CrPC) of 1973 and the *Bachan Singh* judgment drastically reduced the number of death penalties. Under Section 367(5) of the CrPC of 1898, the normal punishment for murder was the death sentence, and in exceptional cases, if the judge awarded life imprisonment, he had to record reasons for not passing the death sentence. The CrPC of 1973 expunged Section 367(5) and introduced Section 354(3) requiring the judge to give "special reasons" for imposing a death sentence. This effectively replaced the presumption in favour of a death sentence with one against it. The effect of these provisions on the law was first articulated in *Ediga Anamma* (1974) by Justice V.R. Krishna Iyer, but as Prof. A.R. Blackshield's study *Capital Punishment in India* (1979) notes, the Ediga case had little impact on the Supreme Court's sentencing practices. It was only in *Bachan Singh* that the law was crystallised through the Constitution Bench judgment, which held that life sentence was the norm and the death pen-



alty an exception that could be awarded only in the most extreme and rarest of rare cases.

Bachan Singh's impact on death sentences was so enormous as to completely change the death penalty landscape and constitute a watershed in the history of criminal law in India. The death sentence, formerly awarded in almost all murder cases, was now reserved for that exceptional and extreme category which was measured in fractions rather than in integers. Between 1974 and 1978, there were 85,000 murders and 25 executions, that is, there were 34 executions for one lakh murders, as reported in *Ke-har Singh* (1989). Since 1980, there have been 10,11,703 murders and about 83 executions — at the rate of 8.2 executions for one lakh murders (*Crime in India*). Furthermore, many death penalties are commuted by the Governor or the President, thereby reducing the number of persons executed to a minuscule percentage. Since 1995, there have been 5,94,009 murders and 25 executions — at the rate of 4.2 executions for every one lakh murders (0.0042 per cent). Since 1999, there have been 4,42,678 murders and



one execution (0.0002 per cent), and since 2005 there have been 2,30,293 murders and no executions (0 per cent).

As per the negative claim made by the supporters of the death penalty, such a drastic diminution in the use of the death penalty to a fraction of its former levels would signify a quantum reduction in deterrence and therefore cause a quantum increase in the murder rate. It is, therefore, necessary to study the impact of this change in the

sentencing policy on murder rates.

In 1952, the Ministry of Home Affairs first started reporting trends in and rates of murder and other crimes through its annual survey, *Crime in India*. The scepticism attached to police crime statistics because of under-reporting, and so on, does not apply to murder cases. Unlike other crimes, murder is more difficult to under-report, cover up, or disguise as corpses cannot be disposed of, even by the police, without proper documentation about the cause of death.

According to successive editions of *Crime in India*, the national murder rate (number of murders for a lakh of people) was 2.81 in 1952. By 1959, it had reached 3, and fluctuated between 2.5 and 3 until 1978. After 1978, the murder rate increased steadily until 1992, when it reached 4.6. From 1992, the murder rate has been in decline. Since 2007, the murder rate has been 2.8 (Figure 1).

Contrary to the negative claim made by supporters of capital punishment, the decline in death sentencing has not caused an increase in murder rates. Far from it. The murder rate has, in fact, declined. The murder

rate today is what it was in 1952, 1956 and 1969. Post-1970, it has never been lower. It has been declining for 20 straight years since 1992. These figures demolish any claim about the supposed deterrent effect of capital punishment and thereby refute one of the main arguments in support of the death penalty.

In other countries, when confronted with such evidence, supporters of capital punishment have argued that the decline in murder rates has been much too transient – a flash in the pan – to question the deterrent effect of the death sentence. However, this argument fails in the Indian context. The murder rate increased over 13 years from 1978 to 1991 at a rate of 0.12 per cent and decreased over 20 years from 1992 to 2011 at the rate of 0.09 per cent. Clearly, the decline in the murder rate in India has been neither sudden nor short-lived. On the contrary, it has been continuous and steady over a period of 20 years – hardly a flash in the pan.

ECONOMIC AND SOCIOLOGICAL FACTORS

Supporters of capital punishment also argue that the decline in murder rates may be a freak occurrence or because of a combination of a set of variables. They attribute such decline in murder rates elsewhere to changes in various economic and sociological factors: standard of living, per capita income, literacy, infant mortality, death rate, and so on.

In the Indian context, these arguments do not stand scrutiny. The economic and sociological factors mentioned above have been constants and not variables. From 1952 to date, the human development index, gross domestic product (GDP), per capita income, life expectancy and percentage of urban population have been increasing steadily without aberration. Similarly, death rate, infant mortality, birth rate, and the percentage of the population below the poverty line have been decreasing steadily over the same period (Figures 2, 3, 4 and 5). These show no correlation to the murder

rate, which increased from 1978 to 1992 and then declined thereafter.

However, the one variable that has consistently and inversely followed the trend in murder rates is the sex ratio (number of females per 1,000 males). The sex ratio was 941 in 1961, and it declined steadily until 1991 to reach 927. It has increased since then and is now at about 940, more or less the same level as in 1961 (Figure 1). The inverse correlation between murder rates and the sex ratio was first noticed in Philip Odenburg's 1992 study ("Sex Ratio, Son Preference and Violence in India") focussing on districts in Uttar Pradesh. Odenburg's findings were confirmed and extended by Jean Dreze and Reetika Khara's study "Crime,

Contrary to popular belief, the murder rate has declined consistently in the past 20 years.

Gender, and Society in India" (2000), which noted that there was a "robust negative correlation" between the sex ratio and murder rates in the whole country: the higher the sex ratio the lower the murder rate, and vice versa. The explanations adduced by these scholars indicate that the sex ratio and the murder rate are not randomly correlated, and that so long as the sex ratio improves, murder rates are likely to decline until they reach an optimum level. The presence of a consistent correlation in India between the sex ratio and murder rates, and the absence of any correlation between death penalties and murder rates undermine the positive and negative claims made by the supporters of capital punishment.

The absence of any data or empirical evidence supporting the positive

claim that the death penalty has a deterrent effect on murder is defended with the argument that it is not possible to show statistically how many people did not commit murder because of the threat of capital punishment. This is no doubt true, but the claim can be tested in other ways. If indeed the threat of the death sentence deters more people from committing murder than the threat of life imprisonment, then the type of person who refrained from committing murder earlier when the death sentence was the standard punishment for murder would commit murder more readily when life imprisonment became the standard punishment and the death penalty fell into relative disuse.

Consequently, the murder rate would rise because of the additional murders committed by these people who were formerly deterred by the threat of capital punishment but are not so deterred by the threat of life imprisonment. As we have seen, this is another form of the negative claim that is contradicted by the Indian data, which show that with the decline in the death sentence the murder rate did not rise – in fact, it fell. The absence of any increase in the murder rate with the drastic reduction in executions of death sentences shows that people are not deterred more by capital punishment than by life imprisonment.

The main ground on which capital punishment is defended is that the death sentence is a greater deterrent to murder than life imprisonment is. The data published over the years by the government belie this claim. The deterrence of the death sentence has been drastically reduced by its infrequent use, and yet not only has the murder rate not increased, it has declined. This significant statistical fact falsifies the central thesis of the deterrent theory of capital punishment.

With life imprisonment extending to the convict's full natural life at the option of the state, and death sentence serving no additional purpose, it is time India reconsidered its stand on a practice that has been abolished by 66 per cent of the world's countries. □

New calculations

With Ramdev joining hands with the NDA and Team Anna promising a political alternative, the anti-corruption crusade turns political. BY PURNIMA S. TRIPATHI

Doubts do remain whether going **political is the right decision by Team Anna**. But its core members say the plan will work provided the Team articulates the issues properly and carries the people along.

AS a scantily clad Baba Ramdev dangled from a Delhi Transport Corporation bus on August 13 urging his followers to get ready for a jail bhara (fill up the jail) agitation protesting against corruption and in the process choking the roads of Delhi with a sea of humanity, political observers got busy writing the epitaph for Team Anna's political initiative. The yoga guru's agitation had, in his own words, "the support of many political parties". He was perhaps referring to the support extended by the constituents of the National Democratic Alliance (NDA).

Not surprising, because, starved of the kind of popular upsurge witnessed in August last year and ignored by the government, Team Anna had abruptly and almost unceremoniously called off its "fast-unto-death" agitation at Jantar Mantar on August 5. Four members of the Team – Arvind Kejriwal, Manish Sisodia, Gopal Rai and Arvind Gaur – started their indefinite fast on July 25 demanding an effective Lokpal Bill, the appointment of a special investigation team to probe the charges of corruption against 15 Ministers in the United Progressive Alliance (UPA) government, and the establishment of fast-track courts to adjudicate cases of corruption against Members of Parliament. Anna Hazare had joined them on July 29 as he had given the government four days' time to respond to the demands. But unlike in August last year, the government ignored the agitation this time, with the result that on August 5 the team announced its withdrawal with a resolve to take on the government politically.

The agitation was withdrawn in response to a call by 23 eminent citizens who expressed solidarity with Team Anna's struggle. In a signed letter, they asked

it not to waste its energy on a non-responsive and indifferent political establishment and instead focus on "creating an alternative political force that is democratic, accountable, ethical and non-violent and capable of leading an electoral revolution to democratise and decentralise power and make the power structure of the country more accountable to the people".

The signatories included Justice V.R. Krishna Iyer, retired Supreme Court judge; Admiral (ret'd) Ram Tahiliani, former naval chief; Gen (ret'd) V.K. Singh, former Army chief; J.M. Lyngdoh, former Chief Election Commissioner; Kuldeep Nayar, veteran journalist; E.A.S. Sarma, retired Secretary, Government of India; P.V. Rajgopal, founder of Ekta Parishad; and Yogendra Yadav, prominent political analyst from the Centre for the Study of Developing Societies (CSDS). They urged Team Anna to call off the agitation because Indian democracy was at a crossroads and needed a new wind and energy to actualise the dream of swaraj. "These brave and selfless volunteers must not sacrifice their health and risk their lives at the altar of an insensitive political establishment.... Their energies are needed for reforming our political system to make it participatory, responsive and decentralised and forging a new instrument for reinvigorating Indian democracy," the letter said.

The most obvious question that emerged soon after was whether it was asking too much of Team Anna, given the fact that it had lost much of its popular support, which was evident from the dwindling numbers at Jantar Mantar. Again, there was the question whether a similar movement by Ramdev at the Ramlila Grounds from August 9, which came to a dramatic end on August 13, would mean the end of the road for Team Anna. For, Ramdev's campaign to fight corruption and bring back the black money stashed away abroad and his slogan "Congress hatao, desh bachao, jo kaala dhan laye, usi ko satta mein laao" (Dislodge Congress, save the nation, elect the party which will bring back the black money), seem to have drawn the political battle lines. Where does this leave Team Anna, which was planning to change the course of Indian politics through the same route: changing the system



SHIV KUMAR PUSHPAKAR

BABA RAMDEV and his supporters being taken away in a DTC bus after their arrest from the Ramlila Grounds in New Delhi on August 13.

through popular agitation on the issue of corruption.

Team Anna is, however, undaunted by the fact that Ramdev has raised the anti-corruption pitch to high decibel levels. Political observers are of the opinion that there is a lot of political space outside the domains of the Congress and the Bharatiya Janata Party (BJP)-led grouping. They say that Team Anna will not lose its relevance as people's anger against corruption in governance is real. With Ramdev joining hands with the NDA and Team Anna promising a political alternative by transforming its anti-corruption struggle into a political movement, the anti-corruption crusade has truly turned political. The general feeling is that while Ramdev will have to carry the baggage of the NDA's legacy, Team Anna promises infusion of fresh energy and ideas that are untried and untested in politics so far.

"In a sense it is good that this separation between Anna's movement and Ramdev's campaign has hap-

pened because their blow hot, blow cold association was leaving a lot of people confused. Initially, it could mean fewer numbers for Team Anna but it will be for the good in the long run," Yogendra Yadav said.

Sarma felt that the fight against corruption should be carried forward without associating it with any sort of emotive fervour, which would have been the case if it had sought any association with Ramdev. Shanti Bhushan, a key member of Team Anna, concurs with this opinion. Incidentally, he has the distinction of being associated with Jayaprakash Narayan's (JP) movement against corruption in the 1970s. Shanti Bhushan, who was Law Minister in Morarji Desai's Cabinet in 1977, said Team Anna was uneasy about its association with Ramdev. "As far as the issue of corruption is concerned, we support it, but we don't support Ramdev *per se* because of his association with Narendra Modi, whom we hold responsible for the Gujarat riots," he said.

But is going political the right decision for Team Anna? Will it end up like any other group of people with hidden political ambitions, piggybacking on popular imaginations on some issue or the other? Yogendra Yadav said the decision to go in the political direction was the right one. "Given the centrality and significance of the issue, this is a step in the right direction. It has been proved in the last one-and-a-half years that the mainstream political parties have failed to address the issue of corruption. Any serious struggle against corruption has to go in the political direction. There are no two views on this. But the question will remain whether they [Team Anna] will succeed. Yes, if they maintain their focus, join hands with other civil society organisations fighting for various issues on the ground, and keep the younger generation involved, they will certainly succeed. If they get the sort of popular support that was seen in August last year, they will definitely succeed," he said. He said there was a lot of scope for politics outside mainstream politics right now, provided the Team articulated the issues properly and carried the people along.

Shanti Bhushan, however, thinks a lot will depend on whether the Team can manage to have 100 per cent clean, tested, motivated, educated, incorruptible and inspired people working for it. "If we can have this section, and there are many in this category, we will be successful, otherwise we will fail. Our aim is not to change the government only but to change the system, and for that we need people with vision, the younger generation which has a dream, those who are passionate about bringing about a change." But in this journey, he warns, personal ambitions will have to be totally set aside, will have to be reined in. "None of us is in this for any personal gain, and this is the way it will have to be. We have to work selflessly for the people," he said.

On how the Team will go about finding such people, he said the search would begin at the gram sabha level. Even if one lakh youth from six lakh gram sabhas, who shared the team's

vision, are mobilised, the purpose would be served. On being asked whether only educated, middle-class professionals could bring about a revolution in a country where 80 per cent of the population lived in villages, he said “this is the section that drives change”. “Don’t underestimate the power of educated youth, professionals such as lawyers, and students. They are the ones who can lead a revolution. It was the case with our freedom struggle also.” He made it clear that they were not asking the youth to give up their education or profession, as had happened during the freedom struggle or during the JP-led movement. “If they can give their time only during weekends, that will be enough. We don’t want them to give up doing what they are doing at present,” he said.

“If we can get such people to join us and if we can generate the kind of support we saw last August, we will sweep,” he said. This was not an impossible task because people’s anger against corruption was such that they would identify with the Team’s vision in its fight against corruption, Shanti Bhushan said.

A DAUNTING TASK

Team Anna is at present engaged in forming a preparatory committee, which will have 70-80 members, who will comprise Team members and representatives of various civil society organisations. This preparatory committee will meet on August 26 for the first time and announce the contours of the political party that they want to launch on October 2. Team Anna members are conscious of the fact that this is a gigantic task, with a huge burden of expectations and several pitfalls, a daunting challenge in fact. “Initially, we were a bit scared. What if we fail? But then we thought even if we fail, we will have the satisfaction of having done our best. We will not have the regret of not having tried enough, and we will not be guilty of having given up midway,” said Manish Sisodia.

According to him, the Team members are not in this movement for per-

sonal gain but to bring about a change in the system so that it can be rid of corruption. “We exhorted the political establishment to bring about this change, but it did not listen. Even if it says yes to our demands now and incorporates our demands in its agenda, we will abandon the idea of going political,” he says. They were forced to take the political plunge because the political establishment had turned a deaf ear to their demands. “But we have a very limited agenda to begin with. We have only four demands: bring an effective Lokpal Bill, along the lines of the Jan Lokpal Bill; bring in changes in the laws in order to give people the right to reject electoral candidates; give them the right to recall elected representatives; and introduce devolution of powers at the panchayat level.”

Asked whether the Team would be able to sustain its performance or fizzle out like the erstwhile Janata Party experiment if it managed to have an effective representation in the Lok Sabha, Sisodia said that did not bother it much. “Even if we manage to bring in this limited change, we will be happy. But here there is a difference between them and what we want to do. Unlike the Janata Party experiment, our aim is to change the system, not only the government. And if we get to this position, we will begin immediately, which they did not do.” Shanti Bhushan said even if this limited agenda was fulfilled, it would have served its purpose “because once institutional changes are brought in, it will be difficult to undo them”. Sarma said even if political establishments born out of such movements were short-lived, “they leave their footprints which are significant in the long run”.

But doubts do remain, even within the Team. Core committee member Santosh Hegde, though a signatory to the letter sent to Team Anna urging it to end the hunger strike, has dissociated himself from its political plans. Similarly, Common Cause, an organisation founded by the late H.D. Shourie which is a part of Anna Hazare’s movement, has its reservations. Maj.

Gen. (Retd) J.P. Gupta, vice-president of the organisation, said whether it was a good idea was debatable. “Time is too short to gain any sizable strength in Parliament to try and change the system. There are big grey areas. It is not only politicians who are corrupt, but the entire bureaucracy, from top to bottom. How do we change that?” Common Cause, which has senior retired bureaucrats and defence personnel as members, is meeting on August 24 to debate the issue.

There are also sniggering comments from the political class, especially from the Congress, about the entire Jan Andolan being a ruse to capture political power. Team Anna has clarified that “it is not about capturing power but about changing the nature of state power. Our objective is to provide a political alternative that will be realised through an electoral revolution to democratise and decentralise power, and make the power structures more transparent and more accountable to the people.”

But what is the constituency this political alternative is addressing, especially since Ramdev, too, has embarked on the same issue? “For us, it is the issue which is important, not who is raising it to whom. It is good if more and more people are raising the issue of corruption because it will keep the issue alive and when it is time to vote, people will use their discretion to decide who is more serious about tackling the issue and they will vote accordingly. We are not talking to any particular class, caste, creed, community or religion because corruption affects all, cutting across all barriers,” Manish Sisodia said. He said Team Anna was willing to step aside if the mainstream political parties wished to accommodate its demands in their manifestos.

“If their conduct in Parliament is any indication, nobody is serious about bringing real structural changes and people can see through this ploy,” he said. It boils down to carrying the people along and then honouring electoral promises. In short, the Team is selling dreams of a corruption-free India. □

Stirring the nest

L.K. Advani sparks an internal battle in the NDA with his prediction on the next Prime Minister. BY VENKITESH RAMAKRISHNAN

At its core is the battle for supremacy that is being waged between Narendra Modi and Advani within the BJP and between Modi and Nitish Kumar in the NDA. The RSS' backing of the Bihar Chief Minister adds to the muddle.

“IN the period between September last year and August this year, the internal battle in the Bharatiya Janata Party [BJP] over its prime ministerial candidate in the next general elections has entered a new phase. And like last year, the name of Bihar's Janata Dal (United) Chief Minister Nitish Kumar, the BJP's National Democratic Alliance [NDA] partner, has been drawn into this battle; this time with greater focus. It is indeed tragic that a battle of these dimensions is raging in the BJP and in the process the name of somebody outside the broader Hindutva fold is

getting highlighted. But the way confusion reigns in the BJP these days, one cannot expect anything different. I presume that this battle will intensify in the days to come with many nuances but broadly following the same political pattern.”

This was the BJP's former ideologue Govindacharya's analysis of the recent developments in the BJP and the NDA following veteran party leader and former Deputy Prime Minister Lal Krishna Advani's early-August blog that predicted the possible emergence of a non-Congress, non-BJP Prime Minister after the next general elections.

Though Govindacharya did not refer to it pointedly, it was not just the leaders at various levels of the BJP and the NDA who got embroiled in the controversial developments. Even the top leadership of the Rashtriya Swayamsewak Sangh (RSS), the fountainhead of the Hindutva-oriented Sangh Parivar, of which the BJP is a part, also got drawn into the issue. In fact, it was the intervention by the RSS top leadership, particularly its Sarsangachalak Mohan Rao Bhagwat, which brought Nitish Kumar's name into greater focus.

Advani had not alluded to any specific non-Congress, non-BJP leader. His article had only said that the situation that might emerge after the next elections could be one where “neither the Congress nor the BJP may be able to forge an alliance which has a clear majority in the Lok Sabha” and hence “a non-Congress, non-BJP prime minister heading a government supported by one of these two principal parties is feasible”. In fact, he had prefaced his projection by stating that he was only addressing the concerns of some senior Congress leaders. His blog said: “In the sixteenth elections to the Lok Sabha, in 2013 or 2014, therefore, whenever the Lok Sabha elections take place, the government likely to take shape can be that of the Third Front. This, according to the Congress Ministers, would be extremely harmful not only for the stability of Indian politics but also for national interests.” Advani added: “My response to the anxiety voiced by these Congressmen was: I can understand your concern, but I do not share it.”

But Bhagwat seemed to indicate who the non-Congress, non-BJP alternative would be by praising



NARENDRA MODI (GUJARAT) and Nitish Kumar (Bihar) at the meeting of Chief Ministers on National Counter Terrorism Centre in New Delhi on May 5.

Nitish Kumar and his government. His exact words: "People say Bihar is the first in governance." Significantly, he had not accorded that number one position to Gujarat's BJP Chief Minister Narendra Modi, who has launched a massive campaign to project himself as the best Chief Minister in India and hence as the best prime ministerial candidate for the NDA.

Many observers within the Sangh Parivar organisations commented that even though several names in the non-Congress, non-BJP parties, ranging from Uttar Pradesh-based Samajwadi Party (SP) leader Mulayam Singh Yadav to Tamil Nadu Chief Minister J. Jayalalithaa to West Bengal Chief Minister and Trinamool Congress leader Mamata Banerjee, would harbour visions of becoming Prime Minister, there was little doubt that, in the final analysis, Nitish Kumar was the one who could ultimately find favour with both the BJP and the Congress as a consensus candidate.

While the RSS spokesperson and leaders in different echelons of the BJP and the NDA did seek to dispel the controversy that emerged out of these developments by stating that it was too early to decide the prime ministerial candidate for the next general elections, there was little doubt as to what this meant within the context of the BJP and the NDA. At its core, the developments underscored the battle for supremacy that is being waged between Modi and Advani in the BJP and between Modi and Nitish Kumar within the NDA. As Govindacharya pointed out, it is a battle that has developed in fits and starts since last September and has rocked the BJP and the NDA time and again.

Modi recently sat on a *sadbhavana* (goodwill) *satyagraha* with the clear intent of projecting himself as a prime ministerial candidate. The exercise was aimed professedly at improving his approval ratings among different minority communities, particularly the Muslim community, which had suffered a brutal state-sponsored carnage in 2002 during his regime. Almost on cue, Advani launched a

nationwide anti-corruption rath yatra, which also sought to underscore his position as the NDA's prime ministerial candidate. Significantly, that rath yatra was inaugurated by Nitish Kumar, a choice that was loaded with political connotations.

The choice of Nitish Kumar as the "inaugurator" then had impacted both the larger polity and the internal dynamics of the BJP in multiple ways. Primarily, at the level of the larger polity it stated that Advani was the most acceptable leader from the saffron party to its biggest and long-standing ally in the NDA. Consequently, it also sent out a message to the BJP hierarchy and the Sangh Parivar that Advani's candidature for the prime minister's position could not be negated against the background of such acceptance with the principal ally.

ADVANI'S MESSAGE

Analysing the flow of developments, the Lucknow-based political analyst Sudhir Kumar Panwar said that Advani was advancing the message of October to new areas. "In October, he stated that his candidature cannot be brushed aside. Now he is saying that if he is not acceptable, the BJP will have to settle for somebody outside the party, somebody like Nitish Kumar." Panwar further pointed out that Bhagwat's comments on Nitish Kumar should be seen as an assertion by the leader of the Sangh Parivar that it is ready to keep all options open as and when a difficult situation arises. "And that is very significant and has medium- and long-term implications for the future of Hindutva politics," Panwar told *Frontline*.

It is indeed not clear at the moment as to how these medium- and long-term manoeuvres of the RSS will unfold. But what is clear is that other leaders of the BJP and the NDA's other Hindutva-oriented party, the Shiv Sena, are not happy with Advani's blog and its projections. Arun Jaitley, leader of the BJP in the Rajya Sabha, wrote in an article that the era of mainstream parties was not over, while Shiv Sena supremo Balasaheb Thackeray wrote

in an editorial in his party's mouthpiece *Saamna*: "What is wrong with the BJP? Are they [the leaders] ill? Have internal fissures made the party frustrated? ... As usual it is their internal matter, but I cannot say, 'forget it'."

Significantly, voices within the JD (U) were not unhappy over the blog. Said party leader Sivanand Tiwari: "Advani is a senior leader, he knows how the polity is developing."

In fact, observers of politics in Bihar have been constantly seeing indications over the past few months on Nitish Kumar's side to acquire this kind of acceptability. With this objective in mind he has been distancing himself from the BJP with studied anti-Modi and pro-Muslim minority comments. He has even said that he will quit the NDA alliance if it names Modi as its prime ministerial candidate for the 2014 general elections. Observers are of the view that this has been done to break with the BJP, get greater support from the minorities, contest the Lok Sabha elections on his own, win more than 25 seats, and make a claim for the prime minister's post, preferably with the support of the Congress and other secular parties.

Bhagwat's claim that Bihar is ahead of Gujarat as a model of "good governance" came against this background, evoking multiple responses. One section is of the view that the RSS leader was trying to coddle Nitish Kumar as the JD(U) would be a crucial ally in the NDA. They also point out that even BJP president Nitin Gadkari had recently assured Nitish Kumar that no decision had been taken on Modi. But there is also the view that Bhagwat is playing clever politics with the aim of scuttling Nitish Kumar's plans to attract Muslim support. "How can a leader so copiously praised by the RSS get Muslim support?" pointed out an observer.

As these contrasting contentions do the rounds in political circles, only one thing is clear: as Govindacharya predicts, the state of turbulence in the BJP and the NDA is bound to intensify. □

Zero tolerance

Chief Minister Mamata Banerjee's absolute intolerance of criticism resurfaces with the arrest of a farmer. BY SUHRID SANKAR CHATTOPADHYAY

Shiladitya Chowdhury, a farmer from Binpur, was arrested for asking her uncomfortable questions at a rally. He was branded a “Maoist” and remanded in judicial custody.



MAMATA BANERJEE. HER apparent paranoia has made her overdependent on the police.

WEST BENGAL Chief Minister Mamata Banerjee has made it very clear that she will not tolerate dissent, criticism and jokes against her government and that police action will be initiated against her critics. First came the arrest of a professor who forwarded an innocuous cartoon of her by e-mail; then came the branding of a college student who asked

her an uncomfortable question on a private television channel's chat show as a Maoist; and now an indigent farmer has been detained for voicing his grievances to the Chief Minister at a public meeting.

All Shiladitya Chowdhury, a farmer from Binpur, did was to point out to Mamata Banerjee at a rally at Belpahari in Pashchim Medinipur district that the rise in fertilizer prices was ruining farmers. But that was enough for the angry Chief Minister to label him a “Maoist” and have him arrested under non-bailable sections of the Indian Penal Code (IPC).

On August 8, like thousands of others in the region, Shiladitya had gone to attend Mamata Banerjee's rally at Belpahari. The area was until recently a known Maoist belt, and so the Chief Minister's rally was taking place amid heavy security. Shiladitya, who was sitting in the front row beyond the security cordon, got up in between and loudly said that farmers were dying and were not getting proper prices for their produce, that fertilizer prices were increasing, and that the government was not doing enough to redress farmers' grievances.

Mamata Banerjee reacted aggressively, pointing him out in the crowd and ordering the police to catch him. As he was being led away, she referred to him as a Maoist who had sneaked into the rally ground to create disturbance. Upon questioning Shiladitya, the police found that he had no links with the banned Communist Party of India (Maoist) and allowed him to return home. But later, the Jhargram Superintendent of Police, Bharati Ghosh, reportedly claimed that Shiladitya had “escaped” before the interrogation was completed – a feat that is difficult if not impossible given the heavy security at the venue.

After his “escape”, Shiladitya went straight home to Nayagram, but the police waited two whole days before picking him up again on the night of August 10. This time he was arrested under Sections 332 (voluntarily causing hurt to deter public servant from his duty, a non-bailable offence), 353 (assault or use of criminal force to deter public servant from discharge of his duty, non-bailable), 447 (criminal trespass, bailable) and 506 (criminal intimidation, bailable). The following morning he was produced before a district court and remanded in judicial custody for 14 days.

RITURAJ KONWAR

The arrest raised a storm of protest from a cross section of the media and civil society. Political parties, both allies of the Trinamool Congress and those in the opposition, spoke out in one voice against the arrest. Communist Party of India (Marxist) Member of Parliament Nilotpal Basu said the arrest was tantamount to “autocracy” while West Bengal Pradesh Congress Committee general secretary Om Prakash Mishra called it a “bizarre case of heightened intolerance”.

The strongest criticism came from an unexpected source – Chairman of the Press Council of India and former Supreme Court judge Markandey Katju, who had, months earlier, showered praise on Mamata Banerjee for her integrity and uprightness. “Her action is most undemocratic, to say the least. I had earlier given a statement in favour of Mamata Banerjee.... But now I have changed my opinion and believe she is totally undeserving to be a political leader in a democratic country like India...,” he reportedly said. He also warned officials carrying out her orders that they could face a situation similar to those sentenced in the Nuremberg trials.

Even in her days in the opposition when she was heading the violent agitation in Singur that led to the departure of Tata Motors’ small car project from the State, she reacted angrily to any question she perceived to be critical of her movement. The term “Tata’s agent” was attributed to anyone asking her an uncomfortable question. But after assuming charge as the Chief Minister of West Bengal in 2011, her threshold for tolerance of any perceived criticism has been diminishing at an alarming rate.

Apart from Ambikesh Mahapatra,



AMBIKESH MAHAPATRA, THE Jadavpur University professor who was arrested in the cartoon case. The West Bengal Human Rights Commission has recommended that the State government compensate him.

a Jadavpur University professor of chemistry, Subrata Sengupta, septuagenarian retired engineer, was arrested for forwarding by e-mail a month-old cartoon relating to Mamata Banerjee’s insistence on removing the then Union Railway Minister, Dinesh Trivedi, from the Cabinet and replacing him with present Railway Minister, Mukul Roy. Her branding of young students who asked her uncomfortable questions on a television chat show as “Maoists” came a month later. As she stormed off the set, she asked the police to take photographs of those who had posed difficult questions to her.

There are many who feel that Mamata Banerjee appears to be constantly looking over her shoulder for unseen enemies. This apparent paranoia, say others, perhaps explains her overdependence on the police. “Apart from the intolerance and undue haste that characterises the present government so far, there appears to be a more-than-necessary dependence on the police. This may be harmful in the long run for any democratic polity,” a senior government official told *Frontline*. Despite all the criticism, the Mamata Banerjee government has remained unapologetic. On each occasion she and her party leaders defiantly justify their stance, no matter how illogical their justifications may appear.

In the cartoon case, the government and the party’s interpretations of the innocuous mail ranged from being “lewd and obscene” to indicating a sinister plot to kill Mamata Banerjee. The farmer’s voicing of his grievances was interpreted as a dangerous bid to breach security and cause mayhem. Mukul Roy, who was present at that meeting, claimed that Shiladitya was drunk and pushed the police personnel and women around him, although

video recordings of the incident show no evidence of such action. Shiladitya, who hails from a family of policemen, had been selected for a training programme at the Central Reserve Police Force camp at Binpur.

As with the previous incidents, this time, too, the Trinamool leaders’ excuses serve only to diminish the credibility of the ruling party. “It is not what he said but how he said it that was offensive,” a Trinamool Congress source told *Frontline*.

HRC REPORT

In a development that has caused much embarrassment to the State government, the West Bengal Human Rights Commission’s report on the cartoon incident has recommended that the State government compensate both Mahapatra and Sengupta by paying them Rs.50,000 each for the manner in which they were arrested and detained and take action against the policemen responsible for the arrest. The report states: “Citizens who are expressing or airing a critical opinion about the ruling party cannot be picked up from their residence by the police at the instance of an agitated mob whose members are unhappy with the critical views of those two persons. If this is allowed to continue, then not only the human rights of the dissenters will perish but free speech, which is the life blood of our democracy, will be gagged. Constitutional provisions will be reduced to parchment promises and we will be heading towards a totalitarian regime in complete negation of democratic values....” The Commission also made it clear that “no one can attribute even remotely any suggestion which is lewd or indecent and slang” in respect of the cartoon that was forwarded.

Though it is not binding upon the State government to follow the recommendations, according to political analysts, governments normally abide by such suggestions. What remains to be seen is whether the present report will prompt the Mamata Banerjee government to avoid such embarrassments in the future. □

GJM sweep

AS was expected, the Gorkha Janamukti Morcha (GJM) swept the elections to the Gorkha Territorial Administration (GTA) in the Darjeeling hills of West Bengal, winning all 45 seats practically unopposed.

In fact, two weeks before polling day, July 29, the GJM had secured a *de facto* majority. It was elected unopposed in 28 seats, as all other important hill parties, including the Gorkha National Liberation Front (GNLF), the Akhil Bharatiya Gorkha League (ABGL), and the Communist Party of Revolutionary Marxists (CPRM), abstained, citing ideological reasons. The Communist Party of India (Marxist) claimed that its candidates had been forced to withdraw their nominations following pressure and intimidation allegedly from GJM supporters. In the remaining 17 seats, the GJM's main opponent was the Trinamool Congress, the ruling party in the State, which announced at the last minute that it would opt out of the fray. "We are putting the interest of the hills and the State above political interest," explained Chief Minister and Trinamool supremo Mamata Banerjee.

Though it was too late to withdraw nominations, Trinamool candidates refrained from campaigning in the last week of the run-up to the elections as per the directions of their party leader.

GJM CHIEF

BIMAL Gurung, who took office as the Chief Executive Officer of the GTA.



SUSHANTA PATRONOBISH

However, in spite of that, a section of the electorate voted in favour of the Trinamool, which secured as much as 10-15 per cent of the votes in some of the seats it contested. This may be indicative of the disenchantment among the people of the hills with the GJM.

In a clear reference to such a sentiment, GJM supremo Bimal Gurung said: "The number of votes that the Trinamool has managed to get is the total number of supporters that the different opposition parties in the hills have." However, that does not explain how the independent candidate San-chavir Subba from Gidbaling-Nimbong constituency in Kalimpong managed to secure 3,418 votes, just 677 fewer than the victorious GJM candidate.

It is unlikely that the election results would have been much different if all the other parties had contested. There is no doubt that the GJM is by far the strongest political force in the region. In the 2011 elections to the State Assembly, it won all three seats in the Darjeeling hills, polling 90 per cent of the votes.

According to some observers, the GJM's authoritarian ways may be a reason for its declining popularity. Others feel the disenchantment stems from the party's acceptance of the GTA, which is being viewed as a separ-

ture from its demand for Gorkhaland.

It may be recalled that when Mamata Banerjee announced at the yearly "Martyr's Day" rally in Kolkata on July 21 that her candidates would skip the GTA elections, the GJM responded by pledging to shelve its separatist movement as long as she was in power.

However, after the results were announced on August 2, party general secretary Roshan Giri made it clear that the Gorkhaland movement was not being abandoned. "This victory does not mean that the demand for Gorkhaland has died out. The functioning of the GTA will go along with this demand," he said.

Even though the Central and State governments harped on development at the swearing-in ceremony, the elected members made it a point to hail "Gorkhaland" from the podium, as if renewing an old pledge. Union Home Minister Sushil Kumar Shinde and Mamata Banerjee, who were present at the function, announced financial packages for the hills and exhorted the GJM leadership to function in a responsible manner. Shinde said that the Centre would provide Rs.200 crore in the next three years, while Mamata Banerjee announced that the State government had already sanctioned over Rs.100 crore for various development projects. "Whatever you need, ask for it, but do not quarrel with us," Mamata said.

But though she has bought temporary peace in the hills with the establishment of the GTA and the promise of development, the cheers from the crowds every time "Gorkhaland" was hailed proved that the agitation in the hills was not over the issue of development alone but over identity. "In the end, if a party has to remain in power, it cannot separate Gorkhaland from the politics of the hills," said a political observer in Darjeeling.

Suhrid Sankar Chattopadhyay

Managed care

Health activists say the health chapter of the Twelfth Plan document exaggerates the role of the private sector in providing health care. BY T.K. RAJALAKSHMI

The concept of universal health care outlined in the draft is fraught with problems. Also, there are some **seemingly innocuous plans**, such as converting the NRHM into a National Health Mission.

THE draft chapter on health for the Twelfth Five Year Plan document not only is grossly inadequate in its approach but exaggerates to unrealistic levels the role of the private sector in providing health care. It invokes the concept of universal health care (UHC), but, critics say, it is far removed from even the basic tenets of such health care. However, what rankles health activists is that while the chapter claims to have referred extensively to the High Level Expert Group (HLEG) on UHC constituted by the Planning Commission itself, the document proves otherwise.

The Jan Swasthya Abhiyaan (JSA), a broad front comprising several organisations campaigning for health for all, said that the chapter failed to build on the recommendations of the HLEG and “misquotes the group’s recommendations in many places and ends by proposing a plan for restructuring the country’s health system that would effectively hand over health care to the corporate sector”. The HLEG, constituted in January 2011 under chairmanship of Dr K. Srinath Reddy, produced a comprehensive report in November 2011.

The draft chapter talks about the concerns that have been plaguing the health care system. Its prescriptions are, however, problematic. It says expenditure by the Centre and the States, both Plan and non-Plan, will have to be increased substantially. “It has already increased from 0.9 per cent of GDP [gross domestic product] to around 1.4 per cent [including expenditure on rural drinking water and sanitation]. This percentage needs to be increased to 2.5 per cent by the end of the Twelfth Plan.” The draft chapter recommends only a small increase in public

expenditure from the present 1 per cent to 1.58 per cent of the GDP, in contrast to the HLEG’s recommendation of a 2.5 per cent increase during the course of the Plan.

It suggests that State governments spend far more in order to reach the targets. “Since expenditure on health by the State governments is more than twice the expenditures by the Centre, the overall targets can only be achieved if, along with the Centre, the State governments expand their health budgets appropriately. Central fund should, therefore, be designed to incentivise an increase in State government spending. Efforts would be made to find a workable way of encouraging cooperation between the public and private sectors through contracting of services, and also through various forms of PPP [public-private participation], while ensuring that there is no compromise in terms of standards of delivery, and the incentive structure does not undermine health care objectives.”

The JSA, which is represented in the HLEG, has trashed the draft chapter’s recommendation that the States should spend more and that the Centre’s contribution be made conditional on the States’ contribution. But of larger concern is the proposal to restructure the health system where a transition from “the present system, which is a mixture of public sector service provision plus insurance, to a system of health care delivered by a managed network”. The chapter claims to have been inspired by the HLEG’s recommendations, but HLEG members have denied this.

The chapter says the health strategy for the Twelfth Plan must “strengthen initiatives taken in the Eleventh Plan to expand the reach of health care and work towards the longer-term objective of establishing a system of UHC in the country”. This includes access to a defined essential range of medicines, which will be entirely free for a large percentage of the population, but the list of assured services, it says, will have to be limited owing to budgetary constraints.

There are two components underlying the document’s vision of UHC: “Preventive interventions, which the government would be both funding and

universally providing, and clinical services at different levels, defined as an Essential Health Package, which the government would finance but not necessarily provide.” The JSA says this means that the government will have to confine itself to providing a small package of services and primarily be a purchaser of virtually all clinical services from the corporatised private sector. Thus, it says, the government will finance with public money and bolster an already resurgent corporate sector providing medical services, adding that this will “decisively halt and eventually reverse the moderate achievements of the NRHM [National Rural Health Mission] in expanding public health infrastructure and services in parts of the country”.

The chapter also talks about making efforts to find a workable way to encourage cooperation between private and public sectors through the contracting of services and also through various forms of PPP while ensuring that the standards of delivery are not compromised and the incentive structure does not undermine health care objectives. In the case of access to essential medicines, the government may contract private chemists, and drug supply would be linked to centralised procurement at the State level to ensure uniform drug quality and cost minimisation by removing intermediaries.

It talks about every citizen family being entitled to an essential health package where private and NGO health providers would also be empanelled to give families a choice.

The document, the JSA says, is strangely silent on drug price regulation, whereas the HLEG had recommended enforcement of price controls and price regulation on essential and commonly prescribed drugs and the incentivisation of the production of drugs and vaccines in the public sector. The chapter also talks extensively about expanding the Rashtriya Swasthya Bima Yojana (RSBY), a health insurance scheme, which appears to be the central thrust of its concept of UHC. But the HLEG had underscored

the inflationary dangers of insurance schemes, especially in the absence of a focus on primary level, curative, preventive and promotive services.

RSBY EXPANSION

The chapter boldly recommends the expansion of the RSBY. “The present Rashtriya Swasthya Bima Yojana, which provides “cash less” in-patient treatment for eligible beneficiaries through insurance, will need to be expanded to increase access to secondary and tertiary care. Its coverage was initially limited to the BPL [below poverty line category] but was subsequently expanded to cover other categories and this process of expansion would continue. It should be the objective of the Twelfth Plan to cover the entire population below the poverty line by RSBY,” it says. Under a section titled “Innovative models of financing: Public-Private Partnerships”, the health chapter says that PPPs offer an opportunity to tap the material, human and managerial resources of the private sector for public good.

“Health has now been included with other infrastructure sectors which are eligible for Viability Gap Funding up to a ceiling of 20 per cent of total project costs under a PPP scheme. As a result, private sector would be able to propose and commission projects in the health sector, such as hospitals and medical colleges outside metropolitan areas, which are not remunerative *per se*, and claim up to 20 per cent of the project cost as grant from the government. Some potential models for PPP in health care, covering PHCs [primary health centres], diagnostic centres and hospitals have been identified and can be considered,” it says. The JSA has critiqued this form of innovative financing, saying that the only eligibility requirement is the location, not any contribution to public health goals.

There are some seemingly innocuous plans such as converting and expanding the NRHM into a National Health Mission. But the ideological bias, as the JSA says, is evident in the chapter when it says “a pure public

sector delivery system involves funding a large public sector health system, with little incentive for the service providers to deliver a quality product”. The JSA argues that there is global evidence to show that the best performing health systems are publicly financed and where health care is almost entirely provided by the public sector or by a combination of public sector and non-corporate providers.

“We emphasised that cherry-picking will not help. A long-term vision was needed,” said Jasodhara Dasgupta, a member of the HLEG. The HLEG had discussed the issue of insurance thoroughly and was sceptical about the outcomes. Vandana Prasad and Amit Sen Gupta of the JSA said all the initial gains of the NRHM were reversed subsequently. There is evidence to show that many irrational procedures were conducted in order to claim the money under the RSBY, they said.

The concept of UHC, as outlined in the draft chapter, is fraught with problems though it has all the politically correct terms such as “determinants of health”. It says: “UHC builds on universal access to services which are determinants of health such as safe water and sanitation, wholesome nutrition, basic education, safe housing and hygienic environment, preventive services as immunisation, maternal and child health care. To venture UHC without ensuring access to determinants of health would be strategically a mistake, and plainly unworkable. Therefore, it would be prudent to realise the goal of UHC in two steps: First is the universal provision of Public Health Care encompassing high impact, preventive interventions which the government would be both funding and universally providing within the Twelfth Five Year plan; the second would be clinical services at different levels, defined in an Essential Health Package, which the government would finance but not necessarily directly provide. The latter would take two Plan periods for realisation, but a move in terms of pilots and incremental coverage can begin in the Twelfth Plan itself.”



N. RAJESH

PATIENTS WAITING TO receive free medicine at the Tuticorin Medical College hospital on April 7. The draft chapter on health talks about every citizen family being entitled to an essential health package where private and NGO health providers would also be empanelled to give the families a choice.

It does not talk about eradicating out-of-pocket expenditure, although it admits that such expenditure on health care is a burden on poor families, and a regressive system of financing, which needs to be modified to tolerable levels in the Twelfth Plan. It also admits that “public expenditure on health is only about 32 per cent of the total, which is low by any standard”. The Eleventh Plan had a more grounded understanding of the situation. It had noted that the growth of the private health sector in India had been considerable in both provision and financing. “There was a flourishing private sector, primarily because of a failing in the public sector. The growth of private hospitals and diagnostic centres was also encouraged by the Central and State governments by offering tax exemptions and land at concessional rates, in return for provision of free treatment for the poor as a certain proportion of outpatients and inpatients. Apart from subsidies, private corporate hospitals receive huge amounts of public funds in the form of

reimbursements from the public sector undertakings, the Central and the State governments for treating their employees,” it had said.

It also noted that “public spending on health in India is amongst the lowest in the world [about 1 per cent of GDP], whereas its proportion of private spending on health is one of the highest. Households in India spend about 5-6 per cent of their consumption expenditure on health [National Sample Survey Organisation, or NSSO]. The cost of services in the private sector makes it unaffordable for the poor and the underprivileged.”

On the cost of treatment by households, the Eleventh Plan document quoting the NSSO (60th Round) noted that the average expenditure for hospitalised treatment from public hospitals was less than half that of private hospitals in rural areas and about one-third in urban areas. There were inter-State variations where the cost per hospitalisation in a government hospital was the lowest in Tamil Nadu (Rs.637 in rural areas and Rs.1,666 in

the urban areas) and the highest in rural Haryana (Rs.11,665) and urban Bihar (Rs.30,822). The cost of hospitalisation in private hospitals was the highest in Himachal Pradesh (Rs.14,652 in rural areas and Rs.23,447 in urban areas) and the lowest in rural Kerala (Rs.4,565) and urban Chhattisgarh (Rs.4,359).

In March, the National Working Group of the JSA had called for a national debate on UHC. The meeting was categorical that even though tax-based financing was the most successful way to finance health, resource allocation to States needed to be equitable. It also rejected what it called “the currently fashionable and politically convenient insurance schemes for tertiary illnesses”, of the Arogyashri type or the limited hospital based coverage of the RSBY type. “We are aiming for health security and universal coverage.”

The working group was also critical of the HLEG proposal for a single capitation fee that would be paid to an integrated care provider as part of a “managed care” model, stating that it was untested and potentially fraught with problems of denial of care, which would be particularly difficult to monitor in the case of a private provider.

“We point out that in the current social and economic context the only possible integrated care provider other than the government is corporate entities, and given international and national experience with these, this is not desirable. We would limit private sector participation to essentially roles that are supplementary to the public system, where costs and quality of care are subject to monitoring and equity considerations are respected,” the working group noted.

The draft chapter on health cannot be finalised with so many loose ends and imponderables, especially when the recommendations will have far-reaching consequences. The least that should be done now is for the government to take the criticisms seriously and rework the basic orientation of the chapter itself, which, in its present form, militates against the notion of health for all. □

Built-in violence

Stereotypical government policies and global approaches persist in family planning programmes. BY T.K. RAJALAKSHMI

Women face much hidden violence through coercive family planning methods in a situation where targets are more important than the modalities of the programme.

URMILA is a 40-year-old domestic worker in western Uttar Pradesh. The mother of six children, all girls, she is now pregnant again and is keen on carrying on with the pregnancy. Her husband is unemployed and is an alcoholic. His relatives have assured her that they will help her to bring up the child and have also hinted that she may finally have a boy. The two sons she bore earlier did not survive beyond a year.

Urmila, who can barely feed her six children,



WOMEN WHO HAVE undergone tubectomy operations resting with their newborn babies at the general ward of the family planning centre of the Family Planning Association of India, Madurai branch. A file photograph.

S. JAMES

does not really want another child, but she knows she will be valued more if she has a son. Besides, she does not know of any abortion clinic and is worried about what an abortion might cost. She is also not confident enough to opt for sterilisation, given all the horror stories she has heard. "I have heard women put on weight and have pain in the stomach and back after the 'operation'. I am scared," she says. She plans to continue working into the last month of her pregnancy in order to keep the family income afloat. The nearest government hospital that offers decent services is seven kilometres away, in Delhi, and that discourages her from making frequent visits.

Her story is representative. Any discussion on family planning in the country should ideally factor in all the problems that women like Urmila confront.

On July 11, at a multi-stakeholder summit held in London on family planning, concerns were raised about providing life-saving, affordable contraceptive services and information to an additional 120 million women in the world's poorest countries, including India, by 2020. The summit, in which India participated, was an initiative of the United Kingdom government, the Bill and Melinda Gates Foundation, and the United Nations Population Fund along with other national governments and donors.

It focussed on the need to support the right of women to decide, freely and for themselves, whether to have children and how many children to have. One of the presumptions of the summit was that more than 200 million women and girls in developing countries did not want to get pregnant and lacked access to contraceptive information, supplies and services. It was also presumed that in 2012, some 80 million unintended pregnancies would occur in the developing world because of the absence of these services and information, resulting in 30 million unplanned births, 40 million abortions and 10 million miscarriages.

The summit also focussed on pregnancy-related complications that re-

sult in maternal deaths, even among teenaged girls. The organisers claimed that the event aligned itself with the broader framework established by the International Conference on Population and Development almost 20 years ago. However, a major difference between then and now is that the emphasis has tilted towards private-public partnerships, even in the delivery of contraceptive services.

SMALL FAMILY NORM

The summit also expected governments to invest and spend more on permanent methods of family planning, a suggestion that did not go down well with health activists back home. The emphasis on population control through permanent methods of family planning has raised concerns in India and elsewhere. Pro-life groups in Western countries have their own arguments, though women and health groups working in India believe that the Central government and many State governments have been aggressively promoting the small family norm through various incentives and disincentives, an issue that did not come up at the London summit.



MELINDA GATES, CO-FOUNDER and co-chair of the Bill and Melinda Gates Foundation, at the London Summit on Family Planning, on July 11.

India's own presentation at the summit has only aggravated these fears. The representative emphasised that there was a paradigm shift in the government's approach, giving emphasis to the promotion and provision of contraceptives for birth spacing. India was also committed, said the representative, to ensuring that family planning would be a central part of its efforts to ensure universal health coverage.

The new strategy, which has a life-cycle approach, focusses on making contraceptives available at the doorstep through 8.6 lakh community health workers who are already going from house to house in rural India distributing contraceptives. As per the latest District Level Household and Facility Survey (2008), of the 54 per cent of the population that reported using any method of contraception, female sterilisation accounted for 34 per cent and male sterilisation accounted for 1 per cent.

Therefore, activists are sceptical. They argue that many State governments continue to adopt coercive policies to meet family planning targets: making sterilisation a precondition for access to development schemes, food rations, free education and water; depriving mothers with more than two children of maternity benefits; and prohibiting persons with more than two children from contesting panchayat and municipal elections. India should eliminate coercive female sterilisation practices as it implements plans for the expanded contraceptive services it announced at the conference in London, noted a statement issued by Human Rights Watch and two reproductive health rights networks, the Coalition Against Two Child Norm and Coercive Population Policies and the CommonHealth Coalition for Maternal-Neonatal Health and Safe Abortions.

Representatives of the National Coalition Against Two Child Norm and Coercive Population Policies, a broad coalition of organisations campaigning against such incentive-based and coercive policies, say that they

have documented a variety of negative outcomes of the two-child policy, such as the exclusion of young women and men from political participation; practices such as female foeticide; infanticide and abandonment of female newborns; and desertion and denial of paternity. Haryana, Himachal Pradesh, Madhya Pradesh and Chhattisgarh have discontinued these policies, but States such as Rajasthan, Andhra Pradesh, Odisha, Maharashtra and Gujarat persist with them, with negative outcomes for girl children and families. Family planning camps in several States continue to focus on targets through their front-line functionaries, accredited social health activists (ASHAs).

CONDITIONAL BENEFIT SCHEME

At the national level, the Indira Gandhi Matritva Sahayog Yojana includes a two-child norm. The scheme, introduced last year following a recommendation in the Eleventh Five Year Plan, is described as a modest conditional maternity benefit scheme where pregnant and lactating women are compensated in part for the wage loss they incur because of the delivery and then in the post-partum period. The scheme envisages paying them Rs.4,000 in instalments until the child is six months old. It applies to only two live births and is contingent on the woman fulfilling certain nutritional and maternal child health conditions.

Why only two live births? The explanation is two-fold: first, the health of the woman should not be compromised and second, family planning is to be promoted. This payment, made through health workers such as anganwadi workers (AWWs) and ASHAs, is fraught with conditions, most of which are well-intended but so bureaucratized that a pregnant woman would rather forgo the benefit than go through with all the red tape. In any case, women like Urmila, who desperately need some form of wage compensation as they are often the sole breadwinners in their families, are deprived of this benefit.

Therefore, even though the target-

free approach was introduced as far back as 1996, it has not prevented governments from getting obsessed with numbers.

The coalition argues that the panic mode is unjustified as the population growth rate has been slowing significantly over the past two decades. In any case, the growth registered in the population was mostly caused by the momentum effect or unmet needs and has very little to do with additional wanted fertility. But with son preference being what it is in the country, it is evident that dominant members within families decide the size of the family and are not necessarily motivated by any targets set by the government.

However, the poor are the hardest hit by the system of disincentives. The incentives, on the other hand, have reduced family planning programmes to female sterilisation programmes. In Madhya Pradesh, all kinds of incentives, including cars, washing machines and DVD players, offered to motivators, surgeons and the women undergoing sterilisation have led to the diversion of the funds meant for such programmes. And, because of the lack of trained personnel, camps are still preferred sites for sterilisations.

State Programme Implementation Plans in high-fertility and “laggard” States such as Uttar Pradesh, Bihar, Rajasthan and Madhya Pradesh have worked out the exact per unit cost and the physical target (the number of people sterilised), which can go up to lakhs. The objective of the family planning programme is to achieve a total fertility rate (TFR) of 2.1. This is the desired TFR, which has already been arrived at in several southern States. The coalition argues that what is required is spacing and not permanent methods of sterilisation.

In States where the TFR is high, as in several northern States, permanent methods are being actively pushed. An overwhelming majority of women are willing to undergo poor-quality sterilisation not out of informed choice but out of desperation, say the coalition members. Women who want to get out of the perennial cycle of reproduction

have access to few options, and those that are available are often notional, says Abhijit Das, representing the coalition. Contraceptive counselling or the levels of partner communication essential for the use of temporary methods are missing, he says. Counselling is often given to a woman after she has given birth and is aimed at the adoption of either the intra-uterine device or sterilisation. The male partner continues to be absent from any outreach programme of the government, which makes the family planning programme hugely woman-centric.

PRESSURED TO MEET TARGETS

Women’s groups and health groups have called for a drastic revision in the country’s approach to contraception. Under the present system, health workers are pressured to meet targets, sometimes with threats of salary cuts or even dismissal. As a consequence, women undergo sterilisation without being provided sufficient information about possible complications, the irreversibility of the method and safer sex practices after the procedure. “Health workers who miss sterilisation targets because they give proper counselling and accurate information about contraception risk losing their jobs in many parts of the country,” said Aruna Kashyap, women’s rights researcher at Human Rights Watch.

In June, Human Rights Watch interviewed more than four dozen AWWs and ASHAs from two districts in Gujarat with large tribal populations. More than 50 health workers said that district and sub-district authorities assigned individual yearly targets for contraceptives, with a heavy focus on female sterilisation. Their supervisors threatened them with adverse consequences if they did not achieve their targets. The threats included withholding or reducing of salaries, negative performance assessments, suspensions and dismissals. One health worker reportedly said that she had been asked to falsify records to show she had met targets or be reported for poor performance. □

Welcome to waste

The Supreme Court order allowing the dismantling of a U.S. ship at Alang makes a mockery of India's commitment to the Basel Convention. **BY V. VENKATESAN**

The court granted permission for the ship to anchor even though it was not sure about the absence of **hazardous substances on the ship** and it had not looked at the inventory submitted by its owner for the purpose of verification.

THE ship-breaking industry in India had the last laugh when on July 30 a Supreme Court Bench comprising Justices Altamas Kabir and J. Chelameswar permitted the ship *Oriental Nicety* (formerly known as *Exxon Valdez*) to beach and its owner, M/s Best Oasis Ltd, to proceed with its dismantling at Alang, Gujarat. The end-of-life ship from the United States was involved in one of the worst oil spills in the U.S.: it struck a reef in Alaska's Prince William Sound in 1989 and dumped 11 million gallons of crude oil into the sea. The ship was purchased in March 2012 by a U.S.-based company, Global Marketing Systems (GMS), one of the biggest buyers of dead ships. GMS sold it to Best Oasis for about \$16 million. The ship had changed flags, from the U.S. to Panama and later to Sierra Leone. But it appears that the validity of the period with Sierra Leone has already expired, and it is now a flagless ship.

According to Gopal Krishna, an activist of the Toxic Watch Alliance (TWA), this is akin to what happened in the case of the Danish ship *Riky*, which entered Indian waters in 2005 under the flag of a country (Roxa) that does not exist. *Riky* was dismantled at Alang even though the case against its beaching and dismantling is pending in the Supreme Court. In the case of *Riky*, the TWA has documentation to show that the Union Ministry of Environment and Forests under the former Minister A. Raja had rejected the suggestion from the Danish government that *Riky* not be allowed into Indian waters and dismantled at Alang because of the presence of hazardous materials on the ship.



THE U.S. SHIP *Oriental Nicety*, formerly *Exxon Valdez*, when it was anchored off the coast near the Alang ship-breaking yard in Gujarat on June 30.

End-of-life ships have scrap steel, mechanical parts and other valuable equipment that are recycled or refurbished for use in other industries. But they also contain an array of hazardous materials, such as asbestos, polychlorinated biphenyls (PCBs) and waste oils, which, according to the Basel Convention, can have serious implications for the environment and human life if not managed properly. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on March 22, 1989. It came into force on May 5, 1992. India ratified it on June 24, 1992.

The Supreme Court's order created much consternation among environmental activists, who had hoped that the court in accordance with the Basel Convention would refuse the ship permission to be beached. According to the convention, there should be prior decontamination of the ship by the country of export and prior permission from the country of import for the ship to enter its territorial waters. Secondly, the country of export of the ship is required to inform the country of import of the movement of the ship in question and certify that it is non-hazardous and non-toxic. The Supreme Court was informed by Gopal Krishna that such intimation had not been



SAM PANTHAKI/AFIP

A VIEW OF the Alang-Sosiya ship-breaking yard in the vicinity of Meethi Virdi village in Bhavnagar district, some 260 km from Ahmedabad. A May 2011 photograph. End-of-life ships yield not only scrap steel, mechanical parts and other valuable equipment but also hazardous materials such as asbestos, PCBs and waste oils.

given and the Oriental Nicety had not been certified to be free of hazardous and toxic substances.

There is evidence to show that the ship first entered Indian territorial waters without permission from India and without decontamination in the U.S. and then the permission of the Gujarat Pollution Control Board and the Gujarat Maritime Board (GMB) was sought to allow the ship to beach for the purpose of dismantling. In an affidavit filed in the Supreme Court, the GMB claimed that it had inspected the vessel, which was converted from an oil tanker to a bulk carrier in 2008, and that there was no sign of any hazardous/toxic substance on board.

The Supreme Court, in an order on September 6, 2007, recommended the formulation of a comprehensive code to govern the procedure to be adopted to allow ships to enter Indian territorial waters and to beach at any Indian port for the purpose of dismantling. However, until such code came into force, the court had empowered the GMB, the concerned State Pollution

Control Board, officials of the Customs Department, the National Institute of Occupational Health, and the Atomic Energy Regulatory Board (AERB) to oversee the arrangements. Thus, the failure to evolve a code became an excuse for these authorities to give the shipowner permission to beach at Alang and to ignore the requirements under the Basel Convention.

On July 30, the Supreme Court was faced with a *fait accompli*: the ship had already entered Indian waters and had been certified by the GMB, the Gujarat Pollution Control Board, Customs authorities and the AERB as being free of hazardous substances. The court noted that the owner of the vessel was incurring a lot of demurrage each day while waiting for the beaching and dismantling and, therefore, permitted the ship to be beached and dismantled even though the Basel Convention had not been complied with.

The Bench added, however: “[I]n all future cases of a similar nature, the concerned authorities shall strictly comply with the norms laid down in

the Basel Convention or any other subsequent provisions that may be adopted by the Central Government in aid of a clean and pollution-free maritime environment, before permitting entry of any vessel suspected to be carrying toxic and hazardous material into Indian territorial waters.” Had this part of the order been applied in the present case, the ship should have been sent back without beaching and dismantling at Alang. Therefore, the exception the court made in this case appears unjustified, if not inexplicable. The court has granted permission for the ship to anchor without even looking at the inventory submitted by the owner for the purpose of verification.

That the court was not sure about the absence of toxic and hazardous substances on the ship is clear from paragraph 13 of the July 30 order: “It is made clear that if any toxic wastes embedded in the ship structure are discovered during its dismantling, the concerned authorities shall take immediate steps for their disposal at the cost of the owner of the vessel, M/s Best Oasis Ltd, or its nominee or nominees.” According to Gopal Krishna, none of the concerned authorities had given an inventory to the court about the hazardous waste contained in the body of the ship, and none of them had said anything about any hazardous waste that the ship might contain in loose form.

In a press release, he said: “Industrialised countries like USA should not be allowed to dump their junk into developing countries like India on account of easy availability of vulnerable and disposable workforce and an alien coastal ecosystem. The eagerness to profit from one of the world’s dirtiest industries, the dismantling of toxic ships by migrant and casual workers from Uttar Pradesh, Jharkhand, Bihar and Odisha at Alang beach, is fraught with disastrous environmental and occupational health consequences.”

According to a report, people in Alaska are happy that the ship is to be broken in Asia. They should be thanking the Indian Supreme Court for facilitating it. □

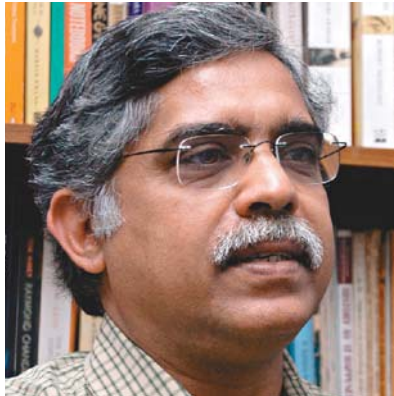
Food, the new crisis

A recession-hit world is only just waking up to the prospect of the coming food crisis resulting in a period of political turmoil with unexpected consequences.

FOR the third time in five years, the world is braced for another food crisis. Bad weather conditions are leading to projections of major production shortfalls in some of the world's leading food suppliers. Substantially reduced access and sharp price increases are, therefore, expected to keep food out of the reach of a larger portion of the world's population. The last two crises, in 2007-08 and 2011, led to food riots in many countries. So it is not just high food prices, increased hunger, localised famines and widespread increase in deprivation that are possibilities. Given the fact that the current food crisis occurs when the world is still steeped in the Great Recession that began in 2007, a period of political turmoil with unexpected consequences is also on the anvil. The world is only just waking up to this prospect.

With the world's food basket consisting of a range of commodities sourced from varied locations, each crisis has its own special features. But the cumulative consequences are similar, especially since the developing crisis is being determined by expected weather-induced shortfalls in the larger producers. Prime among these is the United States, the central agricultural belts of which are experiencing their worst drought in almost half a century. Reports from the National Oceanic and Atmospheric Administration of the U.S. are startling and almost unbelievable. July was the hottest single month in the country on record, and the first seven months of 2012 were on average the warmest since records began to be kept in 1895.

The two crops whose production has been affected the most by this ex-



Economic Perspectives

C.P. CHANDRASEKHAR

treme weather event are maize (corn) and soyabean. Between July and August, the U.S. Department of Agriculture (USDA) slashed its estimate of production from the standing corn crop by 2.2 billion bushels to 10.8 billion bushels. Half of the corn crop is assessed as being in "poor" or "very poor" condition, which is the worst assessment since 1988. The output of soyabean is also expected to be the lowest in five years.

These production shortfalls are significant for three reasons. To start with, the U.S. is the largest producer and exporter of corn. It accounts for nearly half of the world's exports of corn and about one-third of the exports of soyabean. This implies that the effects of the shortfall on supply and prices will be transmitted quickly to global markets for this important grain. Second, corn has alternative uses besides directly entering the food

chain. It is estimated that 40 per cent of the crop is absorbed by the ethanol companies and about a third is used as feed by the meat and poultry business. So, when output falls, demands from competing sources tend to drive prices up further. Finally, even if the worst production shortfalls are in corn and soyabean, other commodities, such as wheat, will also be affected since they can substitute for expensive corn. Thus, there are fears that wheat production will be diverted for feed production, affecting supplies available for direct human consumption.

GLOBAL SIGNS

This is bad news because bad weather and expectations of output shortfalls are not restricted to the U.S. and maize and soyabean alone. Drought conditions have affected wheat production in the Black Sea region (Russia, Ukraine and Kazakhstan), which accounts for a quarter of global exports. Adverse weather is also expected to lower production in Australia, Argentina and China. To make matters worse, governments, such as Vladimir Putin's in Russia, are expected to adopt policies to discourage exports, tightening global supplies.

The first signs of the likely results are already visible. There has been a sharp increase in the prices of certain foodgrains. The Food and Agriculture Organisation's Food Price Index rose 6 per cent in July, driven by grain and sugar prices. Cereal prices rose 17 per cent in June relative to the previous month, maize prices by close to 23 per cent and wheat prices by around 19 per cent. In the U.S., the USDA predicts that corn and soyabean prices may break previous records. When prices begin to rise in this fashion, specula-



REUTERS

JOSE GRAZIANO DA Silva, Director-General of the Food and Agriculture Organisation, has called on the U.S. to reduce substantially the diversion of maize for ethanol production.

tors enter the market and push up prices further. Corn and soybean futures have turned buoyant, reflecting this possibility.

In sum, the world must brace itself for another food crisis. Poor developing-country exporters that have not recovered fully from the earlier crises would be affected the worst, more so because the dollar (in which global prices are quoted) has strengthened as a result of the flight of international investors to what is seen as a “safe(r)” currency. Reuters reports that West African countries such as Mali, Niger and Ivory Coast have cut tariffs on food imports as a means of containing the rise in domestic prices.

Clearly, action is needed at the supply end. FAO Director-General Jose Graziano da Silva, in an article in the *Financial Times* of August 9, called on the U.S. to reduce substantially the diversion of maize for ethanol production.

“With world prices of cereals rising, the competition between the food, feed and fuel sectors for crops such as maize, sugar and oilseeds is likely to intensify. One way to alleviate some of the tension would be to lower or tem-



VICTOR J. BLUE/BLOOMBERG

AT A FARM in Indiana, a stunted ear of corn stands testimony to the drought in the United States, which has affected millions of hectares of cropland, mainly growing corn and soybean.



P. V. SIVAKUMAR

WORKERS UNLOAD FOODGRAINS at the Food Corporation of India's buffer storage godown at Sanathnagar near Hyderabad. The deficit monsoon this year in India is likely to result in delayed and much-reduced sowing.

porarily suspend the mandates on bio-fuels. At the moment, the renewable energy production in the U.S. is reported to have reached 15.2 billion gallons in 2012, for which it used the equivalent of some 121.9 million tonnes or about 40 per cent of U.S. maize production. An immediate, temporary suspension of that mandate would give some respite to the market and allow more of the crop to be channelled towards food and feed uses," he argues.

India, too, is likely to feel the effects of the imminent crisis. The southwest monsoon in the country has been deficient by an estimated 22 per cent, leading to delayed and much reduced sowing. So the kharif crop is expected to be significantly lower this agricultural year. With food prices already ruling high, this can have adverse consequences even without accounting for the global crisis.

However, India's food economy has a buffer to fall back on. Good rainfall in 2010-11 had resulted in a recov-

ery in production from its lower level in the previous relatively poor agricultural year (2009-10). In that year, rice production had fallen significantly and wheat production had stagnated. The better performance in 2010-11 was followed by a further rise in production in 2011-12. This took both rice and wheat production to about 4 per cent higher levels than their previous peaks.

While this is comforting, it is by no means a major step up in production. However, even this rise in production has resulted in excess stockholding in the system. In April 2012, rice and wheat stocks, at 333.5 lakh tonnes and 199.5 lakh tonnes respectively, were much higher than the prescribed minimum buffer limits of 142 lakh tonnes and 70 lakh tonnes respectively for that time of the year. As a consequence, the Food Corporation of India has run out of appropriate storage space for the stocks it procured and needs to hold. In the event, there have been recommendations from various quarters that the government must not

only release stocks to the "open" market but should resort to exports, either directly or through market agents.

It is not only the availability of stocks in excess of the buffer required that is being used to justify such demands. It is suggested that exports of foodgrains when their prices in the international market are ruling relatively high will help the government recoup the expenditure incurred on procuring and storage and also endow domestic prices with a buoyancy that farmers can use to reap benefits just like their counterparts do elsewhere in the world.

What is being ignored here are the likely global effects of production shortfalls in the major food-exporting countries. With the government having made a principle out of calibrating domestic prices in line with international prices, the danger that the country will fritter away its excess food reserves rather than use them to strengthen food security in a period of global uncertainty is real. □

South meets South

The nascent Community of Latin American and Caribbean States establishes relations with India and China with high-profile visits. BY JOHN CHERIAN

While in New Delhi, Venezuelan Foreign Minister Nicolas Maduro said that the creation of CELAC was a positive move against the “hegemonism and imperialism” of the United States.

THE creation of the Community of Latin American and Caribbean States (CELAC) in December last year was a clear signal that the region is no longer under the political and economic sway of the United States. For more than a century, Washington considered South America its backyard and freely exercised its power by installing puppet regimes and forcibly removing popular governments. It is still desperately trying to stem the left-wing tide that is sweeping the region. The “soft coups” in Honduras in 2009 and in Paraguay recently are illustrations. In both cases, serving Left-leaning Presidents were removed and replaced with politicians indebted to Washington.

The coming into being of CELAC was also a signal that the states in the region would strive to put up a united front on key foreign policy issues facing the international community.

RELATIONS WITH INDIA

In the second week of August, the 33-member CELAC formally established relations with India and China, the two leading powers of Asia. The Foreign Ministers of Chile, Venezuela and Cuba visited New Delhi and Beijing to hold high-level talks with their counterparts. Their first stop was New Delhi. After the talks, it was agreed that CELAC and India would form a “strategic alliance”. There will be an annual meeting between the CELAC presidency and the Indian government. The meetings will be similar to the India-European Union summits held annually. Both sides also expressed a strong desire to increase

bilateral trade, which is estimated to be at around \$25 billion now.

Chilean Foreign Minister Alfredo Moreno pointed out that the Latin American region’s current annual trade with India stood at 4 per cent. (Chile currently holds the *pro tempore* presidency of CELAC. Cuba will take over charge in January.) This is only one-tenth of the region’s trade with China. The Chilean Minister pointed out that Latin America and the Caribbean had the largest reserves of oil and many minerals and also a large agricultural market.

Indian External Affairs Minister S.M. Krishna, speaking to the media in New Delhi after meeting the CELAC delegation, said that both sides had reacted positively to the idea of working together “on issues relating to the reform of the United Nations, climate change, and the global economic situation, in the interest of developing countries”. Krishna said that India and CELAC had “a shared understanding on regional developments and threats to international peace and security”.

Venezuelan Foreign Minister Nicolas Maduro said that among the important agreements signed in New Delhi was the decision to set up a business economic development forum, an agricultural working group and an energy forum. He described the agreements signed between the new regional grouping and India as historic. “It is extraordinary to see how regions like India, one of the great emerging powers, are articulating themselves in the historic meeting with Latin America and the Caribbean,” he said.

During the visit of the three Foreign Ministers to Beijing, diplomatic links between CELAC and China were duly formalised. The two sides agreed to strengthen commercial ties further. Chinese Premier Wen Jiabao offered CELAC \$5 billion in economic assistance and another \$10 billion in loans for infrastructural development. The decision to set up a China-CELAC Cooperation Forum was also announced during the visit of the delegation. The forum will do the spadework for developing a working agenda for the deepening of relations.



VIJAY KUMAR / PTI

EXTERNAL AFFAIRS MINISTER S.M. Krishna greets Foreign Ministers Alfredo Moreno of Chile (right) and Nicolas Maduro of Venezuela before the first meeting of the India-CELAC Troika Foreign Ministers in New Delhi on August 7.

In New Delhi and Beijing, the Venezuelan Foreign Minister emphasised the importance and urgency of building a multipolar world. He said that the strengthening of relations between CELAC and the two emerging Asian powers would hasten the shift away from the current unipolar state the world found itself in. “We are quickly moving towards the formation of a multipolar world, where China is already undertaking a very relevant role as a principal emerging power,” he said in Beijing. “Latin America and the Caribbean is another emerging force, and both [China and CELAC] are configuring what is going to be the future world,” he added.

Maduro said in New Delhi that CELAC as an organisation faced two important challenges – that of “integrating internally” and “respecting the political and ideological diversity” that existed in the continent. Chile, for instance, has a Centre-Right government. Cuba and Venezuela are among the growing number of Latin American and Caribbean countries that have embraced a left-wing ideology. “Ideological diversity in Latin America is a reality,” said Maduro.

CELAC has proved that there is enough room for governments espousing varying ideologies to coexist. Even before CELAC came into being, the region had seen other political group-

ings such as Unasur (Union of South American States), which has 12 members and was created in 2008 at a meeting in Brasilia, the Brazilian capital; Mercosur (consisting of key states such as Brazil, Argentina and now Venezuela); and ALBA (the Bolivarian Alternative for the Americas).

Mercosur was mainly the initiative of the two big Latin American countries, Brazil and Argentina, and is a regional bloc. Venezuela was made a full member of Mercosur following the recent “soft coup” in Paraguay. The U.S. and some right-wing parties in the region did not want Venezuela to get the membership of the grouping but the coup in Paraguay, a Mercosur



JORGE SILVA/REUTERS

PRESIDENTS HUGO CHAVEZ (left) of Venezuela and Raul Castro of Cuba at the opening session of the CELAC summit in Caracas in December 2011.

member state, hastened the process. Former President of Paraguay Fernando Lugo was in favour of full membership for Venezuela. His open support was a factor that led to his ouster from office. Venezuelan President Hugo Chavez said that with his country joining Mercosur, the grouping would become the “fifth world power, with a regional GDP of over \$3.3 billion”. Chavez said that his country’s membership would give the grouping “much more life in the South American project of independence and the integral development of the peoples of Latin America and the Caribbean”.

ALBA membership has so far been confined to states having very close ties with Venezuela and Cuba – such as Ecuador and Bolivia.

Another important grouping is Petrocaribe. Caribbean member countries can buy oil from Venezuela at preferential rates, which is a boon for the poor countries in the region that are adversely affected by the global economic downturn. The general aim of all these blocs, including CELAC, is to evolve independent foreign and trade policies for the region. Until the late 1990s, it was Washington that was calling the shots in Latin America, with almost all countries in the region

embracing the mantra of neoliberalism and free trade.

MOVE AGAINST IMPERIALISM

During an interaction with a small group of senior Left party leaders and intellectuals while in New Delhi, Maduro said that the creation of CELAC was a positive move against “hegemonism and imperialism”. He said that even the formation of BRICS (Brazil, Russia, India, China and South Africa) was “an expression of multipolarity”. He described the meeting in New Delhi as “very positive” and said that it would help “revitalise South-South relations”.

Achieving unity in Latin America was “a dream of Simon Bolivar”, the Minister said. Bolivar, who was born in Caracas, was the 19th century “liberator” of Latin America from the yoke of Spanish colonialism. “Bolivar talked about a Union of the Republics that had been under Spanish rule,” said Maduro.

The articulate Minister pointed out that Latin America was now in the forefront of forging a new alliance that would be able to build “a multipolar world, free from the influence of the empire [the U.S.]”. Maduro emphasised that timing was the essence. “We

have to move fast. We must be prepared to play our cards so that a multipolar world emerges. Neoliberalism goes against the *raison d’être* of humanity,” he averred. The U.S., he said, should not be allowed to use “the trump card of war” against the rest of the world as it was doing today.

Maduro had taken time off from his hectic election campaign schedule in Venezuela to visit India. He had, in fact, flown to India straight from an election rally. President Chavez is up for re-election in October this year.

Maduro underlined the importance of the coming elections in his country. He said that the election campaign had been transformed “into a battle of ideas” to protect the gains of the revolution that Venezuela had witnessed since Chavez was first elected to high office in 1999. Since then, according to Maduro, his country has been facing a “permanent challenge” from Washington. Maduro said that a victory at the polls for Chavez was crucial not only for Venezuela but for the entire region. “The nation has regained its independence in the last 14 years. Before that, Venezuela was treated as an oil company by the U.S.,” observed Maduro.

Maduro said that Venezuela was witnessing the making of “socialism for the 21st century”. Cuba was the earliest model that inspired revolutionaries and progressive people in the region, but the goal in Venezuela was to build a new model of socialism. The Venezuelan government, Maduro said, had defined the way to reach benefits to the grass-roots level. “It will be socialism with Venezuelan and Bolivarian characteristics,” said the Minister. Washington is pouring in money to aid the opposition candidate, Henrique Capriles, who seeks to defeat the Bolivarian revolution.

“We are being subjected to a permanent media war orchestrated by the U.S.,” said Maduro. “Obama likes to dominate us with a smile. We keep smiling back at him as long as he is only smiling. Mitt Romney, however, is madder than Bush. We are ready to meet any eventuality,” said Maduro. □

The Sinai test

The August 5 attack on a border post in the Sinai poses the first set of challenges for the new government. BY ATUL ANEJA

With the Muslim Brotherhood claiming the Mossad's hand in the attack and the Army studiously refraining from pointing its finger at Israel, the Sinai incident has once again exposed the deep fissures within the Egyptian establishment.

THE recent killing of 16 soldiers manning a border post in the Sinai poses a new set of challenges that will test the vision, resolve and tactical nimbleness of Egypt's elected leaders. The August 5 attack on the troops, as they were about to break their Ramzan fast, was swift and ruthless. Thirty-five assailants, travelling in three vehicles, struck with lethal ferocity and then sped towards the Israeli border

in two stolen armoured vehicles. One of the two troop carriers exploded at the Kerem Shalom crossing manned by Israel. The other vehicle managed to travel a distance of two kilometres inside Israeli territory before it was blown apart by a missile fired by an Israeli aircraft. Some of the attackers managed to escape the wreckage but were killed during an engagement with Israeli ground troops. Eight bodies – five on the Israeli side and three on Egyptian territory – have been recovered. With the gunmen either dead or missing, the floodgates of speculation have opened regarding the motive for the assault and the masterminds behind the plot.

The attack in the Sinai, an area rich in history, which was occupied by Israel but returned to Egypt following the 1979 peace treaty between the two countries, has opened a Pandora's box. Domestically, the attack raises questions about the competence of Egypt's new Islamist leaders to protect their land and the people who reside within. The crucial geographic location of the Sinai – on the borders of Gaza and Israel – has brought into focus Egypt's

A HANDOUT PICTURE released by the Israeli army shows a vehicle burning near the Kerem Shalom border crossing after unidentified gunmen crossed into Israel from Egypt late on August 5.



neighbourhood policy in the post-Mubarak era. How will Egypt maintain its cross-border interaction with the Palestinian residents of Gaza without alienating Israel, which would oppose a fundamental impairment of the status quo worked out during the Mubarak years? The incident has also drawn attention to the problematic relationship between Egypt's elected leaders and the military, which, habituated to a good working relationship with the Israelis, under the watch of the Americans, may be disinclined to pursue an alternative course.

Soon after the attack, the Muslim Brotherhood, the parent organisation to which President Mohamed Morsy belongs, accused the Mossad, the Israeli intelligence agency, for masterminding the strike. "Evidently, this crime may well be the work of Israel's Mossad, which has sought to abort the revolution ever since its launch, and which issued instructions to Israeli citizens in the Sinai to leave immediately, just days ago," read a Muslim Brotherhood statement. It added: "It is clearly noticeable that every time a warning like this is issued, a terrorist incident takes place in the Sinai."

The statement reasoned that the attack fulfilled major Israeli objectives. For instance, it saddled the Egyptian government, already grappling with several tricky internal difficulties, with a major problem on the borders. The Brotherhood also saw the attack as a diversion meant to dissuade the President from pursuing his "reform project".

It also tarnished the image of the new Egyptian government, which was formed only a few days earlier. Finally, the attack was meant to drive "a wedge between the Egyptian administration and the Egyptian people on the one hand and between the Palestinian government and the people of Gaza on the other".

A more detailed explanation for the attack targeting the Mossad has come from Mousa Abu Marzouk, the politburo chief of the Hamas, which has the Muslim Brotherhood's support and administers Gaza. Incidentally,

Marzouk now resides in Cairo, having shifted his base from Damascus in the aftermath of the 17-month-old internal conflict that has embroiled Syria. His presence in Cairo and the recent red-carpet welcome accorded to the Hamas leader Ismail Haniyeh underscore the emotional warmth that exists between the higher echelons of the Hamas and Egypt's new Islamist leadership.

For the first time since the 1973 campaign against Israel, fighter jets have been deployed in the Sinai.

In an interview with Egypt's *Al-Ahram* weekly, Marzouk went to great lengths to establish a case against Israel in view of the attack. "The perpetrators could be Islamist extremists but the possibility of them being infiltrated by Israel remains strong," he asserted. Marzouk pointed out that the killing of the attackers arouses suspicions about Israeli involvement.

"First the assailants target Egyptian border guards, then they head into Israel only to discover that they're very, very exposed to the Israeli air force, which instantly kills them all. Next thing you know, Israel is cheering its victory over a terrorist group." He added that the killings might have become necessary in order to shroud the identity of the assailants. "The vehicle that the attackers were driving has also been completely destroyed... leaving very little for Egyptian investigators attempting to trace the car's origin," he said.

Marzouk was also sceptical about the involvement of international terror groups such as the Global Jihad as alleged by sections of the Israeli and

Egyptian media. He pointed out that the Global Jihad, the Mujahideen Shura Council and the Soldiers of Islam could easily be one and the same. "It takes four or five people to form such a group. They give it a name, then change it later on."

The Hamas leader also dismissed the widely circulated attribution of the attack to the opening of the Rafah border crossing by Egypt's new leadership as it supposedly allowed "terrorists" to infiltrate the Sinai from the Gaza strip. "The Rafah border policy hasn't changed since Mubarak's ouster," said Marzouk. The only difference is that the numbers have gone up from 350-450 to 1,000 on the days when the crossing is open. Besides, the opening of the Rafah border is irregular, and material supplies of food and medical equipment are channelled through the Kerem Shalom crossing, which Israel controls.

Marzouk explained that Israel's motive in orchestrating the attack is to discourage Egypt's new leaders from departing from the Israel-friendly policies that had been pursued by former President Hosni Mubarak. "It's an effort to sabotage everything good that has happened, the improvement in dealing with the blockade and Gaza's needs and how Egypt will handle the Palestinian file in the future. There's the Sinai, the future of the peace settlement and even the Egyptian-Israeli peace agreement. Israel wants to maintain the pre-revolution status quo. Its possible involvement in the Rafah attack should be understood within this context."

The Palestinian leader observed that Israel seemed to be succeeding in its effort, for the Rafah crossing had been closed immediately after the incident, resulting in the reinforcement of the "collective punishment" that Palestinians had endured in Gaza after Israel had besieged the coastal strip in 2007. The website of the *Al-Ahram* newspaper quoted local residents as saying that the state-owned Arab Contractors company had been deploying heavy machinery to destroy tunnels linking the Sinai with Gaza, under the



AMR ABDALLAH DALSH/REUTERS

A JULY 19 picture of Egypt's President Mohamed Morsy (right) with the Hamas leader Khaled Meshaal (centre) and politburo head Mousa Abu Marzouk at the presidential palace in Cairo. On the Sinai attack, Marzouk said in an interview: "The perpetrators could be Islamist extremists but the possibility of them being infiltrated by Israel remains strong."

supervision of Egyptian military forces. Many of these tunnels were used in the past to ferry essential commodities to the coastal strip to counter the blockade that Israel imposed, though their misuse also has been rampant.

The Sinai incident has once again exposed the deep fissures within the Egyptian establishment, especially between the elected representatives and the military, which has enjoyed a privileged position in the country for long. Unlike the position of the Muslim Brotherhood, which has sent in the largest number of people to parliament and won a tough fight in the presidential contest, the army has studiously avoided pointing a finger at Israel over the August 5 attack.

On the contrary, it seems to be blaming Gaza-based groups, some affiliated with the Hamas, for the strike.

A senior security official told the Egyptian daily *al-Youm al-Saba'a* that a combination of the Gaza-based Islamic Jihad, known for its strong links with Iran, and the Global Jihad in Egypt was responsible for the attack. The state-run MENA news agency appeared to corroborate this view, when it said that the attack had been perpetrated by "jihadists" who had "infiltrated from Gaza through tunnels in collaboration with jihadist elements in the al-Mahdiya and Gabal Halal areas" inside Egypt.

A Palestinian daily also reported that Egypt's General Intelligence was seeking the extradition of three members of the Izz ad-Din al-Qassam Brigades – the armed wing of the Hamas. The three include Raed Attar, who has been in Israel's crosshairs because of his alleged involvement in the 2006 abduction of its soldier Gilad Shalit.

While Egypt's civilian leaders and military are likely to differ deeply on the approach towards the Gaza-based Palestinian Hamas, they are, in the immediate aftermath of the attack, expected to work together to root out all elements of insecurity within the Sinai.

Long years of neglect during the Mubarak years has alienated the local Bedouin population from the government. The area has also become a hotbed of weapons smuggling and drug trafficking into the Gaza Strip through the network of tunnels. Following the killing of Libyan leader Muammar Qaddafi, the instability in Libya is also generating a heavy flow of weaponry into the Sinai.

The Al Arabiya television station, quoting local residents, reported that weapons such as Grinov machine guns and anti-aircraft missiles are pouring in from Libya. Smuggling gangs are



COFFINS OF THE 16 Egyptian soldiers killed in the August 5 attack on the Sinai border with Israel being taken for a state funeral.

pushing M16 rifles and a variety of less potent machine guns from Sudan as well. Besides, further destabilisation of the Sinai, known for its exotic landscape and famed beaches, can undermine tourism, the lifeline of Egypt's economy.

Unsurprisingly, the Egyptian establishment has descended heavily on the Sinai, mounting simultaneous air and ground assaults, apparently against anti-government militant networks. Egyptian security sources estimate that more than 2,000 Islamists reside in the Sinai. For the first time since the 1973 campaign against Israel, fighter jets have been deployed in this desert zone. On August 9, the Israeli Security Cabinet approved the request from Defence Minister Ehud Barak to allow the deployment of helicopter gunships by Egypt in the Sinai. The necessity of an Israeli approval over Egyptian sovereign territory has

reinforced the debate in Egypt over the terms of the 1979 peace treaty, which limit the deployment of personnel and types of weaponry in the Sinai. The Muslim Brotherhood has already expressed its dissatisfaction with the status quo, when it said in its statement that "the fact that our forces in the Sinai lack the personnel and the equipment to protect the region or guard our borders... makes it imperative to review the terms of our accords with Israel".

Separately, Essam El-Erian, the acting head of the Freedom and Justice Party (FJP), the political arm of the Brotherhood, called for the evolution of "a national vision of the Sinai and its residents, and Palestine and its people, and a new approach *vis-a-vis* the gangs protected by certain people in power and the lax homeland security". His comments followed major changes that President Morsy had de-

creed in the country's security establishment. Morsy sacked Egypt's intelligence chief, the head of the Republican Guard, the commander of the military police and the Governor of North Sinai. The new appointees included Major-General Ahmed Mohamed Zaki as chief of the Presidential Guard, Mohamed Raafat Abdel-Wahid as acting head of the General Intelligence Service, and Ambassador Rifa'a Al-Tahtawi as head of the Office of the President of the Republic.

Some FJP officials have called Morsy's revamp "revolutionary". However, the jury is still out on whether the security changes that have been instituted are merely a charade born out of the necessity to cool the inflamed public sentiment or a serious and deeply thought-out move that would not only challenge the existing military top brass but also the status quo *vis-a-vis* Israel. □

A tale of two cities

The civil war raging in Syria's two cities could destabilise the neighbouring states

too. BY JONATHAN STEELE IN DAMASCUS AND MARTIN CHULOV IN ALEPPO



GORAN TOMASEVIC/REUTERS

Were Aleppo to fall, it would almost certainly be followed by Damascus, **amplifying the schism** between Shia Islam, whose leaders back the regime, and the region's Sunnis.

LIKE the other military policemen in the minibus, Mohammad Asaad was wearing civilian clothes as he set off for work in the north of the province of Damascus. "No one would take the risk of wearing a uniform," he said as he lay in his bloodstained T-shirt in the Tishreen military hospital, Syria's main centre for wounded security force personnel and their families.

At an-Nabk, a small town about 35 miles (56 kilometres) from the capital, the crowded minibus came across an unexpected obstacle on August 9. "We were surprised to see insurgents blocking the road. Without warning they started shooting," he recalled as doctors dressed his injured arm. "They used every kind of weapon. Our minibus tipped over, and several people died," he said. "The passengers included civilians, and one of the dead was a mother. The insurgents ran off, and we managed to call for help to bring us here."

In a nearby ward, another policeman who survived the incident was about to be X-rayed. Doctors said the attack had produced six "martyrs", the standard term used by all sides in Syria's civil war for military and civilian dead. Five others needed surgery. The lethal encounter was typical of a conflict in which a growing number of government troops and police personnel are dying. Hundreds of police personnel and soldiers are losing their lives in ambushes and other attacks along Syria's roads as they try to contain the opposition and bring reinforcements to areas of fighting.

In another ward at the hospital, two conscripts, barely out of their teens, were being treated. One was in too much pain to talk. The other described how the roadside military post they were guarding came under attack, also on August 9, in al-Tall, a district on Damascus' northern outskirts. They were struck by bullets but managed to escape and hide.



IBRAHIM AL-DIMASHKI/AFP

IN A DAMASCUS neighbourhood, one of the many buildings destroyed in the fighting between soldiers and rebels.

The rebel attacks have been coming closer to Damascus. Fighting erupted in several outlying districts of the capital in the last two weeks of July. Although the rebels withdrew from some of them after heavy government retaliation, the sound of artillery and helicopters is a regular feature.

Many better-off residents have sent spouses and



PHIL MOORE/AFP

IN TARIQ AL-BAB DISTRICT of Aleppo, a man injured in shelling on August 10 is wheeled to a taxi. He was among those who had queued up in front of a bakery to buy bread. At least a dozen people were killed and many more were injured in the incident.



GORAN TOMASEVIC/REUTERS

IN CENTRAL ALEPPO, a resident carrying bread on an empty street on August 10.

children to Beirut or Amman. Several government officials also keep their spouses and children out of the country and are not penalised for it. An estimated 15,000 poorer people have fled from districts where clashes have occurred and are sheltered in schools. The International Committee of the

Red Cross and the Syrian Arab Red Crescent are providing emergency food, water and health care for thousands of displaced people around the city and in Damascus province. The United Nations refugee agency is providing blankets and will soon start providing hot meals for at least 6,000

families who cannot cook their own *iftar*, the meal that ends the daytime fast during the month of Ramadan.

The army has stepped up the random searches at checkpoints on the main roads in and out of the city, creating major traffic jams during rush hour. Minibuses – the favourite form of public transport in the city – are often stopped, and passengers, in particular young men, are asked to show their IDs.

Compared with the scene in February, the mood is clearly tenser. At that time it was sometimes hard to believe that war was raging elsewhere in Syria. The capital itself, with its tree-lined streets in the city centre, looked completely normal, with children playing in parks and women walking unescorted even after dark. The streets are emptier now and fewer shops stay open in the late evening even though after a day of blistering temperatures it is the best time to be outside. “Normally in Ramadan after *iftar*, the streets are

full of people enjoying the cool air. Look at it now. This is the reaction to what's going on," said a government official.

The staff at the Tishreen hospital confirm that there has been a surge in violence, though they blame the rebels. "The number of injured we treat has increased over the past six months, and particularly over the last month, because of the escalation of support for the terrorists. The average intake of the wounded now ranges between 20 and 50 a day," said the hospital's director, who holds the military rank of general. His office walls have three pictures of President Bashar al-Assad, one alongside his baby son, and two of the Syrian leader's father, Hafez al-Assad. For what he also called safety reasons he declined to give his name. Four of the hospital's nurses and two doctors had been killed on their way to work in recent weeks, he said.

"We have about 20 martyrs daily, only one or two of whom are civilians," he added. A few die in hospital but most of the dead are soldiers whose bodies are brought to the morgue for relatives to collect for burial. A five-minute service is held in a yard at the back of the building in front of a triptych of paintings on large boards: one showing the eternal flame at the tomb of the unknown soldier; the centre-piece a montage of wings, anchor and crossed swords, marking the three armed services; and on the right-hand panel the national flag. Then the coffin, of cheap-looking wood, draped in the flag and with the name of the dead soldier at the front, is loaded into a minivan, which is driven to a cemetery with the dead man's relatives sitting beside the driver.

The general complained that foreign governments were aiding what he called the terrorists. "It has escalated here because of money being pumped in from Qatar and Saudi Arabia and support from the United States and Britain. The U.S. and Britain claim to be fighting terrorism but why do they support Islamist extremists and terrorists on our soil?" he said.

"When insurgents attacked sol-

diers in the Sinai, Israel and Egypt were allowed to slap them down, so why don't they allow our army to hit the terrorists here? The U.S. supported the mujahideen in Afghanistan because they were fighting the Soviet Union, but then the U.S. had to kill some of the same jihadis," he said.

In a bed in a private room upstairs, Haytham Shaaban, a colonel, lay with both legs bandaged below the knee and his right leg in a metal clamp. He is an Alawite from a small town near Tartus in Syria's coastal north-west, the heartland of the Alawite offshoot of Shia Islam, from which the ruling Assad family comes. His wife, who sat near him, is Sunni, while another middle-aged couple visiting them were also Alawite and Sunni.

Shaaban claimed Syria's rebels were trying to divide people on the basis of their sect when intercommunal relations in Syria's multicultural society had always been good, as his own family and friends could testify. He insisted Syria's protesters were manipulated by an outside conspiracy. "The demonstrators were told to raise the issue of sectarianism," he said. "That was the demand of the countries which organised this."

He acknowledged that Syrians were angry with corruption but argued: "If this was a revolution against corruption, we would have joined it ourselves and the President would have been the first to join it. We will terminate the criminal groups supported by Arab and foreign countries and make Syria secure again. They'll never undermine our morale," he declared.

ANGUISH IN ALEPPO

The mood, of fear and despair, is no different in Aleppo, the country's second largest city, 350 kilometres north of Damascus. Standing at a crossroads on the edge of the city on August 7, Abdul Rahman, his wife, mother, and three young children were carrying their possessions in plastic bags. They had left their home in the nearby suburb of Sahor and started walking north.



The family had no car and were hoping to find a minibus to take them to safety in Turkey. But neither buses nor much else is working in the city anymore. As the roar of a war plane pierced the blue sky, the family seemed to be resigned to their fate. "I hope one of the farmers, or anyone else who still has fuel, will let us get on his truck," said Abdul Rahman as two of his children wept. "But look around, there is nothing moving."

Towards the north, the drab grey fringes of the city gave way to pastures turned copper-toned by the sun and fruit orchards that seem to be begging for rain. To the west, down the road towards a main underpass into the central city, a heat haze shimmered above the baking black tarmac. The only vehicle visible was an upturned bus that had been looted and scorched when the siege of the city started around the last week of July.

Shops remain shuttered in most of eastern Aleppo. Rubbish continues to pile up by the day. A pervasive stench hangs over the east of the city, a fetid mix of refuse, death and sewerage – it is difficult to distinguish between them anymore. The rumble of bombs and the scream of jets make another assault on the senses. On August 7 morning, near a rebel position in the east, one of the jets approached fast and low. Its camouflage markings could easily be made out as it raced towards the rebel-held schoolhouse in its sights. So could the bombs attached to its underbelly. The jet roared across the top of the rebel base – a schoolyard, in which portraits of former President



ZOHRA BENSENNA/REUTERS

SYRIANS FLEEING THE fighting arrive at the border with Turkey in the northern province of Idlib on August 6.

Hafez al-Assad lay smashed inside on the floor. It dropped its bomb – and missed, instead hitting a small adjoining home, killing a family of 10 and leaving a neighbourhood in despair.

Those hours of anguish following the air strike offered one of the few glimpses into the mood of Aleppo at war. In the east of the city, once-thriving marketplaces come alive only in the hours before dusk. Workshops that line main roads are closed and footpaths eerily empty. The ancient citadel that towers above Aleppo's cultural and historic heart stands in defiance to the trouble all around. The medieval castle has seen revolution and war before; its stone walls have seen off the Byzantines, the Greeks and the Romans.

But this popular uprising gives the feeling of breaking new ground. The uncompromising order of the four-decade-old Assad-family rule is now in play, and so too is the regional dynamic that has underpinned the regime since the fall of the Ottoman empire.

Were Aleppo to fall, it would almost certainly be followed by Damascus, amplifying the schism between Shia Islam, whose leaders back the regime, and the region's Sunnis, who mostly oppose it. The instability now crippling Syria's two main cities could easily destabilise the neighbouring nation states that emerged from the ruins

of empire and war 90 years ago.

For now though, the battle in Aleppo is being fought in two halves. To the west of the citadel, past the old marketplace and the cobbled alleys around it, regime forces remain in effective control. "They're beyond the wall of the castle," a young rebel from the Aleppo countryside said as he looked through the scope of his assault rifle. "Go anywhere near them and a sniper will kill you."

A maze of overpasses marks the battle lines for now. The road that snakes west along one overpass from the central suburb of Sahor is barren and menacing. Across the crest of the hill is a regime checkpoint, the first of many in the west of the city, where life is reputedly easier than in the rebel-held east.

It is difficult to gauge though; any reporter found by an official without a regime-issued visa for entering Syria will quickly experience life on the inside of the police state, the pillars of which are in an administrative district 3 km away. There regime flags still fly above government buildings as they do from army positions and state institutions. The jets that haunt the skies in the other half of town are not heard here. Restaurants still serve the Aleppo establishment and commercial class, which has shown few signs of wavering in its support for the regime.

And the state media assure people that it will all be over soon.

But the uprising has undeniably reached even the regime's staunchest supporters and penetrated its inner sanctums. "They are scared over there," said a defector who escaped from the city's intelligence district on August 9, motioning across the overpass. "It is not a normal situation, and people don't know who is going to win. The atmosphere is not normal. It has never been like this before."

On August 8, rebel leaders in northern Aleppo insisted that they would soon be launching attacks against state buildings, particularly intelligence services. The attacks, they said, would serve two purposes: to remind the security network that it is no longer omnipotent and to free many of the thousands of prisoners jailed in the buildings.

Around noon on August 10, the first such attack was launched on a prison near central Aleppo. Rebels claim the two-hour fight for control of the facility led to the death of guards and freedom for many inmates, some of whom quickly joined their ranks.

To the south of the facility, smoke continued to billow above the suburb of Salahedine, which was a rebel stronghold until August 9 and is now a bombed-out wasteland. Elsewhere, in the east, the call to prayer from suburban mosques echoed across a vast and tired city. The holiest day of the week, in the third week of the month-long Ramzan fast, was largely sombre and silent.

"Maybe our victory will come after Id [the three-day festival to mark the end of Ramzan]," said Abu Nour, an Aleppo rebel whose unit was forced to flee Salahedine. "I don't want to have to think too much about what will happen next. All I know is that what we are doing is right."

As she helped neighbours pick through the ruins of the house bombed by jets, one woman did not seem so sure. "What have they done to Aleppo?" she said. "What are they doing to Syria? How will it end?" □

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JACQUELYN MARTINAP

AT A DEMONSTRATION in the Kasenyi military base in Kampala on August 3, an Ugandan soldier holds a small U.S.-made drone that the Ugandan military uses in Somalia to fight Al Qaeda-linked militants.

This time for Africa

The United States makes a scramble for the African continent to set up a string of military bases. **BY JOHN CHERIAN**

Vice Admiral Robert Moeller said in 2008 that AFRICOM was meant to preserve “the free flow of oil and **natural resources from Africa to the global market**”. He was more explicit later when he said that its job was to protect American interests.

IT was clear by 2007 that Washington had once again turned its attention to the African continent with renewed vigour. The decision that year by the George W. Bush administration to set up the Africa

Command (AFRICOM) was a signal of Washington’s intent to set up a string of military bases in Africa. American interest in the African continent had waned considerably after the end of the Cold War.

Until the early 1990s, the United States and its Western allies tried their best to derail the liberation movements that had come to power in countries such as Angola and Mozambique. The West propped up authoritarian, corrupt and racist regimes during this period. Until the very end, the Ronald Reagan administration supported the apartheid regime in South Africa and its occupation of Namibia. Mobutu Sese Seko, the kleptomaniac who controlled the vast riches of the Congo, was a long-standing ally of the West.

In the past decade, as countries such as China, Brazil and India turned their diplomatic and trade

focus on the continent, which is blessed with a great variety of mineral resources, the U.S. decided to make its mark forcefully. Since 2007, Washington has used the “war on terror” to extend its military reach. Initially, its military moves were restricted to the Horn of Africa, where Islamist militants have emerged as the main fighting force in the long-running civil war in Somalia. Today, however, American forces operate covertly and sometimes overtly in sub-Saharan Africa. There were overt operations in Somalia and Libya, where U.S. Special Forces helped tilt the balance in favour of puppet regimes.

The emergence of South Sudan as an independent “client” state of the U.S. has come as a boost for policy planners at the Pentagon. The creation of the new state was virtually the handiwork of the Bush administration, which forced the central government in Sudan to agree to the dismemberment of the country in 2005. Kenya, Uganda, Djibouti and Ethiopia are now firmly aligned with the U.S. and are facilitating the American build-up in the region.

The regime change in Libya has been a feather in the cap for U.S. military planners. Slain Libyan leader Muammar Qaddafi had played an important role in convincing the African Union to protest strongly against the presence of AFRICOM on the continent. “Operation Odyssey Dawn”, the military operation that led to his overthrow, was led by AFRICOM. The new Libyan regime is indebted to the West for its existence. The strategic location of the country will be of vital importance for the U.S. military as it expands its footprints on the continent.

Speaking at a conference in 2008, U.S. Vice Admiral Robert Moeller declared that the setting up of AFRICOM was to preserve “the free flow of oil and natural resources from Africa to the global market”. Two years later, in an article in *Foreign Policy* magazine, he was even more explicit: “Let there be no mistake. AFRICOM’s job is to protect American lives and promote American interests.”

As of now, the U.S. only admits to having one formal base on the continent – Camp Lemonnier in the small Republic of Djibouti located in the Horn of Africa. But it is common knowledge that U.S. soldiers operate from other countries in the region, helping the troops of client states in their ongoing battles with various rebel groups. Ethiopia launched a full-scale invasion of Somalia at the behest of the U.S. to dislodge a moderately Islamist government that had briefly brought an end to the civil conflict. Last year, it was the turn of the Kenyan army to invade Somalia, again at the U.S’ instance, to liberate towns and areas that were under the control of Al Shabab, the Islamist militant group that has emerged as a powerful resistance force. American drones and planes are being used freely to target the leaders of Al Shabab. Military drones take off on assignments in Somalia from the U.S. base in the island nation of Seychelles.

There are reports that the Americans are now getting ready to help Ethiopia launch another war of aggression against neighbouring Eritrea. The U.S. describes the country as a “destabilising” force in the region. Eritrea is among the few countries on the African continent to have refused to kowtow to the diktats of Washington. In 2009, U.S. Secretary of State Hillary Clinton threatened to “take action” against Eritrea for allegedly helping Al Shabab. The United Nations’ monitors dispatched to Eritrea, however, found no evidence of this. The U.S. then persuaded the U.N. Security Council to impose sanctions on the impoverished country. Despite the absence of any evidence to back the American claims, the sanctions on Eritrea have not been lifted. The U.S. claims that the punitive sanctions have forced the Eritrean government to stop aiding the Somali resistance, and, therefore, they should remain.

LILY PADS

The Americans admit to having “lily pads” on the African continent. Though not formal bases, these are



small facilities with a limited number of troops and pre-positioned weapons. One such is on the island nation of Sao Tome and Principe, just off the West African coast. U.S. officials compare this base to the Diego Garcia military base in the Indian Ocean. Diego Garcia has played an important role in ensuring American military domination in the Persian Gulf region.

There has been pressure on India too from the U.S. to secure “lily pad” facilities. “Around the world, from Djibouti to the jungles of the Honduras, the deserts of Mauritania, the Pentagon has been pursuing as many lily pad bases as it can, as fast as it can,” wrote David Vine of Washington University.

There are reports of injured American soldiers being flown in from the Horn of Africa to military hospitals in Europe. There have been many U.S. Special Forces and commando missions inside Somalia in recent years. The Ugandan airport in Entebbe has been increasingly used since 2009 for surveillance missions in the African continent.

Within a month of the killing of Qaddafi in October 2011, the U.S. an-



JOE PENNIE/REUTERS

MEMBERS OF THE Senegalese army listening to U.S. Secretary of State Hillary Clinton's speech in Dakar on August 1.

nounced that it would be sending troops to four African countries – Central African Republic, Uganda, South Sudan and the Democratic Republic of Congo. The U.S. has already deployed some 100 to 200 troops in Uganda to help the government there defeat the Lord's Resistance Army (LRA) and capture or kill its notorious leader, Joseph Kony.

The remnants of the LRA troops are mostly concentrated in neighbouring South Sudan and Central African Republic. The U.S. is believed to have a troop presence in these countries too. A senior U.S. military official told Nick Turse, an American investigative reporter, that the soldiers had been positioned in these countries at the request of the host governments.

There were reports in the American media of three Special Forces personnel being killed in northern Mali in April. Since an American-trained military officer led a coup in Mali in March this year, the country has been witnessing a conflict as the northern

part dominated by the Tuareg ethnic group declared independence. Today, the dominant force in towns such as Timbuktu and Gao are militant Islamist groups like Ansar Dine, which Washington has deemed to be hostile to its interests.

TRAINING EXERCISES

Washington also conducts counterterrorism training in many African countries and arms their armies. They include the armies of Burkina Faso, Tunisia, Chad, Mauritania and Niger. AFRICOM is scheduled to complete 14 important training exercises in 2012 with countries such as Morocco, Cameroon, Botswana, South Africa, Lesotho, Senegal and Nigeria.

The U.S. has been funnelling increasing amounts of military aid to friendly African states to fight terrorism. The Pentagon has given \$82 million in counterterrorism aid to Uganda, Burundi, Kenya and Djibouti. According to reports in the American media, the U.S. is planning to

introduce more conventional forces into Africa next year. "Special Forces have a particular capability in this area, but not the capacity to fulfil the demand, and we think that we can fulfil the demand by using conventional forces," Col. Andrew Dennis of the U.S. Army told a reporter. The U.S. newspaper *Army Times* reported that 3,000 American soldiers would be deployed in Africa by next year.

President Barack Obama rarely mentions AFRICOM in his speeches despite turning the continent into a military playground for the U.S. Army. Along with his Secretary of State, he has kept on lecturing Africans that all the problems they face are because of bad governance and corruption. The main priority of the U.S., according to its President, is building "democratic structures".

Partnering the U.S. enthusiastically on this issue is the Indian government. In many countries, especially those aligned with the U.S., Indian officials are actively involved in training government and civil society members with the help of funds coming from the U.S. State Department in many instances.

Hillary Clinton, on a tour of friendly African countries in early August, suggested in a speech in the Senegalese capital, Dakar, that some countries were out to exploit the natural resources of the continent while "America stands up for democracy and universal human rights even when it might be easier to look the other way and keep the resources flowing".

Countries such as China and Brazil prefer to invest in infrastructure projects in a big way while loosening their purse strings to give developmental aid at very low interest rates.

By the way, Washington's closest allies in the region today are authoritarian rulers who brook no dissent. They include Paul Kagame, the President of Rwanda; Yoweri Museveni, the long-ruling President of Uganda; and Prime Minister Meles Zenawi of Ethiopia, who has been rigging elections ever since ousting Mengistu Haile Merriam in the early 1990s. □

Derry – celebrating

The Northern Ireland town is emerging like a butterfly from its blood-encrusted chrysalis. TEXT & PHOTOGRAPHS BY SUDHA MAHALINGAM



A majority-Catholic town in a Protestant nation, Derry is **independent enough to maintain its Irish and religious identity while being practical enough to belong politically to the United Kingdom.**

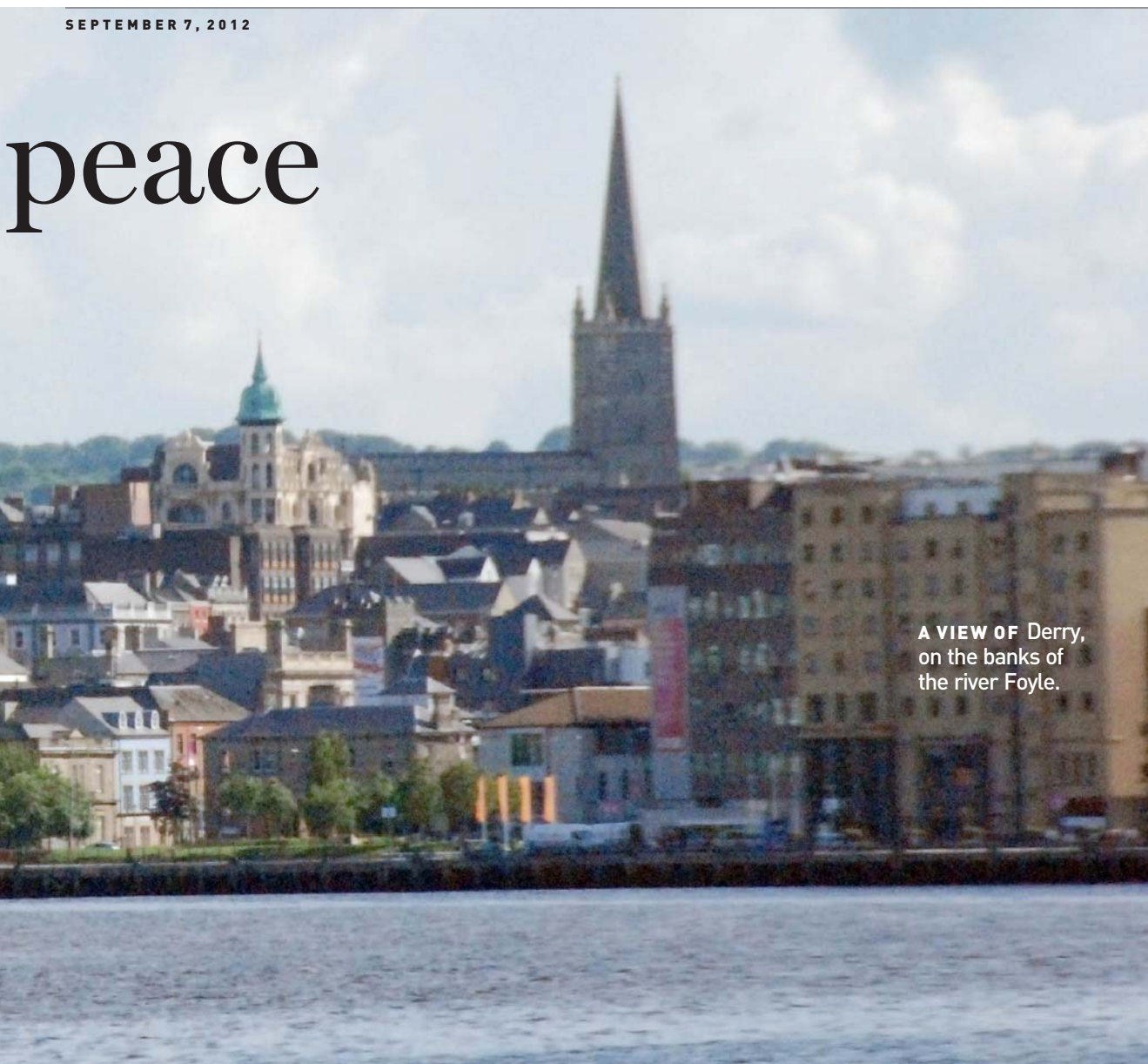
“It took just one little word to salve our wound, aye sir, that’s what it takes to heal,” says Martin McPherson, our tour guide, his voice choking with emotion. We are standing on the ramparts of the city walls overlooking the Bogside, the exclusively Ca-

tholic neighbourhood of Derry in Northern Ireland. Hitherto known as Londonderry, to reiterate London’s stronghold over this quintessentially Irish town, Derry today is shrugging off that prefix.

Derry is the second largest town in Northern Ireland, in the province of Ulster, which is part of the United Kingdom. The town leads a somewhat schizophrenic existence. A majority-Catholic town in a Protestant nation, Derry is independent enough to maintain its Irish and religious identity while being practical enough to belong politically to the U.K.

But this balancing act, which it seems to have accomplished, has not been easy. For an entire generation, Londonderry and the whole province of Ulster in which it is situated witnessed bitter and often violent political conflict between the Provisional Irish Republican Army (IRA) and the British gov-

peace



A VIEW OF Derry, on the banks of the river Foyle.

ernment. The IRA had set its sights on an independent Irish state encompassing the Republic of Ireland and Northern Ireland, but for the majority of the Catholic population, it was a struggle for basic civil rights.

The Northern Irishers were splintered into many groups – the nationalists who wanted Ulster to join the Republic of Ireland, the Unionists who were happy to remain loyal to the British monarch, and those who wanted independence from both. Many lives were lost and much blood flowed down the Foyle, the river that runs through Derry. To a visitor, it is evident that the Irish identity is non-ne-

gotiable and Irish pride implacable. But political identity is another matter. Surely, the city seems to have made peace with its Janus-faced existence of retaining its Irish identity within a historical political legacy that hitched it to the U.K.

BLOODY SUNDAY

Martin is not the usual type who merely reels off anecdotes and statistics with mechanical precision. His narratives are drenched with emotion, his anecdotes often personalised, and his words measured. Like other Derriers, he knows what peace means to his beleaguered city; he knows the value of

that single healing word, the harbinger of normality and stability to his people, who until recently knew only strife. The word he was referring to is “sorry”, uttered by British Prime Minister David Cameron during his visit to Belfast in June this year. Queen Elizabeth, who came a few days before Cameron, was the first British monarch to visit Northern Ireland. She too knew the value of reaching out. In a symbolic gesture, she made it a point to shake hands with Martin McGuinness, the rebel hero of the IRA, and set in motion the process of mending torn relations.

The apology was to the families of



A BLOODY SUNDAY mural. Derry's walls and ramparts are splattered with murals and posters depicting scenes from that Sunday in January 1972 when 13 persons were martyred.



THE MURAL OF a young girl in school uniform gunned down on Bloody Sunday.



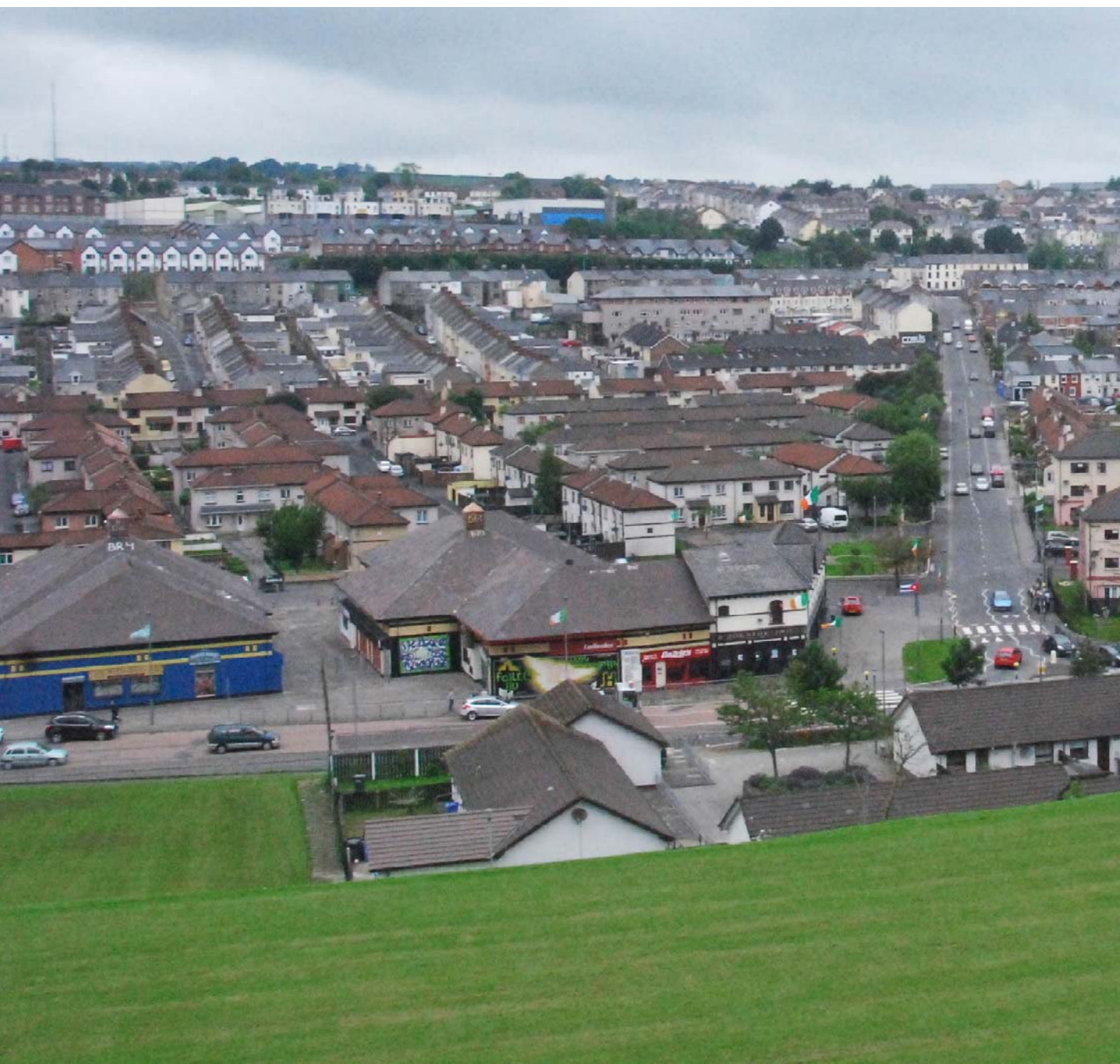
(ABOVE, AND LEFT) The Catholic area of Bogside is a virtual open-air gallery of Republican murals depicting scenes from “The Troubles”, as the last few decades are called.

the 13 persons martyred in an incident that has since come to be known as Bloody Sunday. Protesting against discrimination based on faith and demanding civil rights, a group of unarmed young people marched through the streets of Derry on January 30, 1972, only to be felled as cannon fodder. Derry has since remained implacable. You cannot go to Derry without being constantly reminded of Bloody Sunday. Its walls and ramparts are splattered with murals and posters

depicting scenes from that Sunday. Bloody Sunday has been seared into the collective soul and memory of the city. A poignant mural that is visible from almost everywhere is that of a young girl in her school uniform gunned down in cold blood on that day. Two reports based on official inquiries into the incident failed to nail the culprits who shot at the crowd. Now a third inquiry has been ordered.

Meanwhile, Derry moves on. The town is strategically located on the

Foyle, which joins the Atlantic a few kilometres downstream. It is a recessed port that became a vantage location in successive wars for stationing troops, submarines and warships. The name Derry, derived from the Gaelic word *doire* meaning oak grove, became Londonderry when King James I granted the city a royal charter in 1613 and built a protective wall around it. Successive British governments began the task of populating this entirely Catholic country with Protestants, a



process that came to be known as the Plantation of Ulster. Very soon, the planted Protestants began to dominate all walks of political and professional life. It drove the Catholics to the Bogside, a term used to denote the poorer neighbourhood across the river, leaving them to scrounge for a livelihood.

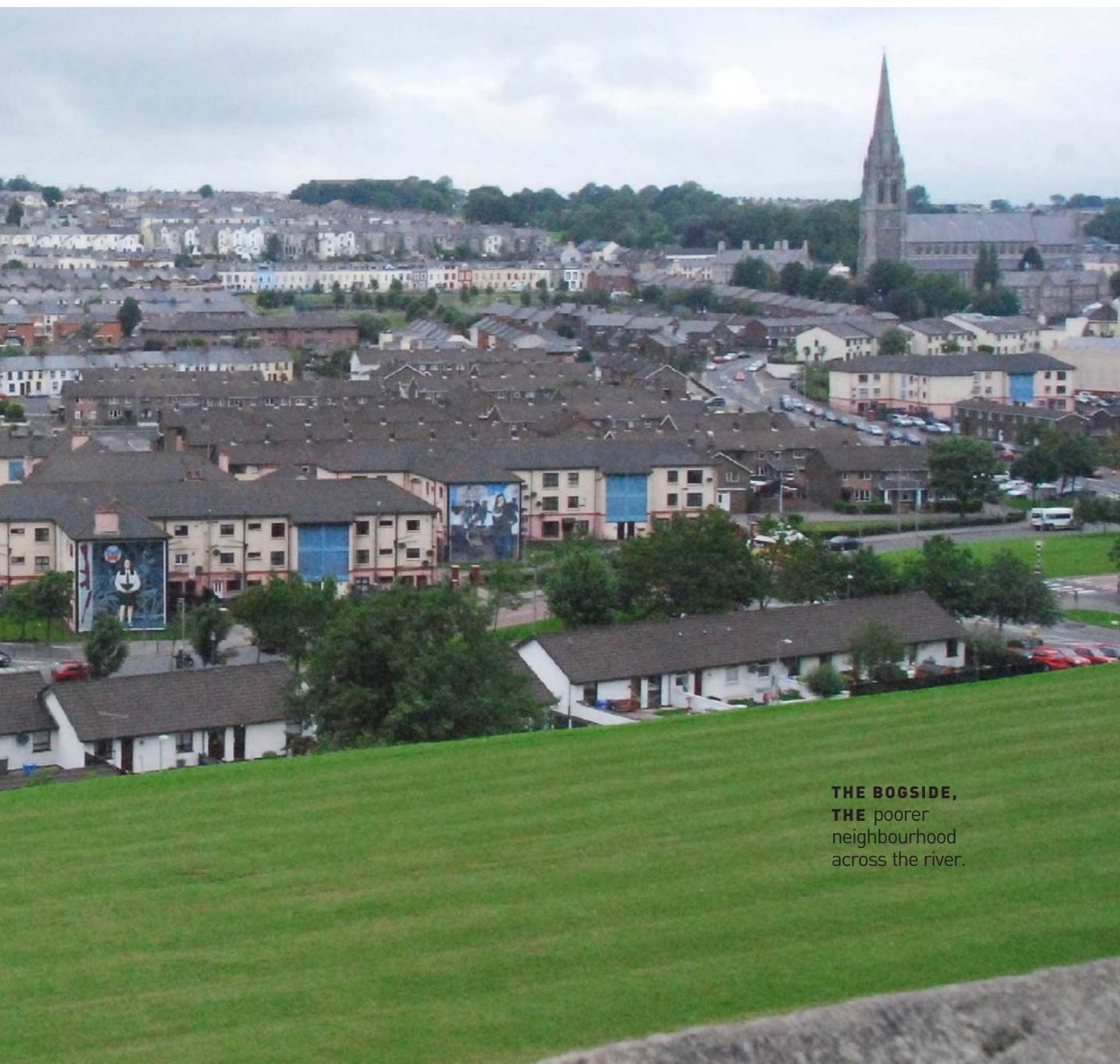
TOWER MUSEUM

The Tower Museum in Derry is a delight, a fascinating detour of the histo-

ry of Derry right up to the present day. The town once used to be the shirt-making capital of the world. My guide tells me his mother used to have one of those hand-operated sewing machines, which she worked late into the night to churn out perfectly sewn uniform shirts for soldiers during the Second World War. She would do this after feeding all her 10 children and husband and after finishing all the household chores. No wonder, Derry has infamously found its way into Karl

Marx's *Das Kapital* for being a sweatshop where women worked long and hard hours in shirt-making.

But the most interesting story that the museum tells is that of the successive waves of migration from Derry and the rest of Northern Ireland. The first wave was prompted by the potato famine from 1845 to 1852 that killed at least a million people. Subsequently, political strife and religious discrimination also sent people in droves to the shores of America. Today, there are 41



THE BOGSIDE,
THE poorer
neighbourhood
across the river.

**YACHTS
PARTICIPATING
IN** the Clipper
Festival docked
at the marina
in Derry.





million citizens of Irish extraction in the United States; the latest wave is still on, thanks to the slowdown of the Celtic Tiger. The migrants and their descendants from this part of the world produced several American Presidents, starting from Andrew Jackson to Barack Obama. Martin proudly announces that at least six of them were from Ulster.

But Northern Ireland bucked the economic boom enjoyed by the Republic. In fact, while Dublin is now multi-ethnic, multicultural and multilingual, Northern Ireland remains all Irish. Signboards are in Gaelic as well as in English, but generations of Northern Irishers never learnt their own language. It is only now that schools have made Gaelic part of the curriculum.

CLIPPER FESTIVAL

As you step out of the museum, you are attracted to the carnival-like atmosphere along the Foyle. Festoons and bunting are fluttering everywhere, there is toe-tapping music blaring out of loudspeakers, folks have turned out in their finery, the quay is lined with elegant yachts and boats, and the marina is packed with stalls selling everything from confectionery to cheeses. The occasion is the annual Clipper Festival.

The festival heralds the return of 14 ocean-going yachts that raced around the world. This year the yachts stop in Derry for a few days before they continue their journey across the globe because there is a yacht from Derry as well as a Derrier in the group. The route covers 15 legs that include all the continents and oceans. Clipper is raced by people from all walks of life. One does not need to be a swimmer or have previous sailing experience to join the Clipper race. Once you are selected to join, you will be trained for 32 days to equip you for the challenging voyage. Each yacht proudly announces its nationality. I spy a Chinese yacht from Qingdao, but alas, there is



none from the Indian subcontinent.

We climb aboard the Londonderry yacht to meet 54-year-old Orla Quigley, who joined the Atlantic leg of the journey from New York to Derry, a very turbulent stretch. "You have to do everything on board from trimming the sails to cleaning out bilges to cooking and cleaning toilets. It's a tough trip but very rewarding because it brings out all your reserves and shows you how far you can push the limits of your body. Besides, the kind of marine wildlife you get to see on the trip is something unique. I am richer for having done it - mentally, emotionally and experientially," she says with apparent satisfaction.

We do the rounds of the yacht, which can carry 16 persons. The living quarters are cramped and spartan, but even on the high seas you can be connected to the world - there is a cubicle with a computer and Internet connection.

All of Derry seems to have assem-

THE PEACE BRIDGE across the Foyle. Built a year ago, this powerful symbol links the Bogside to the predominantly Protestant part of Derry.



bled on the marina to welcome the Clipper crews. Suddenly, a street market has sprung up, its wares enticing local people and visitors alike. But make no mistake, this is a novel experience for Derriers. Things that are taken for granted elsewhere, such as street markets and music concerts in a park, are all very special events. After all, such normal events were unthinkable until a year ago.

But now, a British parade ground

has metamorphosed into a concert park. Where once canons used to boom and reports of rifles ring out, loudspeakers have been set up in preparation for the evening's concert. There is an air of expectation and rejoicing.

The peace bridge, a powerful symbol that links the Bogside to the predominantly Protestant part of Derry, was built only a year ago but has already witnessed millions of footfalls –

no mean feat for a tucked-away town like Derry.

The city has finally managed to emerge like a butterfly out of its blood-encrusted chrysalis. The year 2013 will see Derry playing host as the U.K.'s City of Culture, an honour it won in a closely fought contest with other cities. A variety of events ranging from music, drama, carnival, films and theatre to poetry, art and games have been lined up to spice up the year.



A STREET SCENE in Derry. (Top) Things that are taken for granted elsewhere, such as this street market, are special here.

I wander off to St. Columb's Church. St. Columb was the missionary who persuaded heathen Irishmen and women to the Catholic faith and holds a special place in the Irish heart. Cross the river and go to the Bogside, which is a virtual open-air gallery of Republican murals depicting scenes from "The Troubles", as the last few decades are called. They are a constant reminder to the local people of the troubled past that makes the peaceful

present so much more precious.

Ulster, of course, is much more than Derry. We drive off into a Constable countryside where placid cattle graze on velvety slopes and quaint cottages are strewn like confetti on the green expanse. We are headed to the Mellon family residence, which has been turned into a museum. It is the same Andrew W. Mellon who went on to become a very successful banker, but is better known for the Carnegie

Mellon University he set up in Pittsburgh, U.S.

After three delightful days in Derry, I am off to Belfast from where I catch a train to Dublin. There are no borders between Northern Ireland and the Republic of Ireland. The only tell-tale marks to remind you that you are in the Republic are the signposts that speak of distances in kilometres and shops that accept only the euro and not the British pound sterling. □

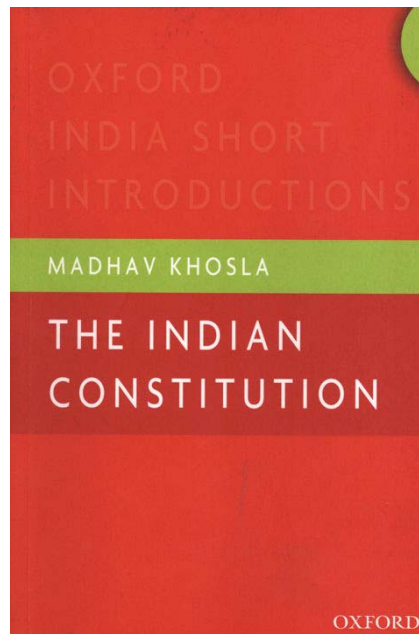
A tour of the Constitution

A young scholar provides a fascinating and comprehensive view of the Indian Constitution. BY V. VENKATESAN

THE book under review, authored by Madhav Khosla, a PhD candidate in political theory at Harvard University, is a promising attempt to unravel for the average reader the complexities in the making and working of the Indian Constitution. The book is published by Oxford University Press (OUP) as the first one in a series of short introductions on different subjects.

The Indian Constitution surprises the reader on two counts. Students of Indian Constitution have long had to read commentaries by teachers of law or practitioners on each of the 395 Articles and the 100-odd amendments, with all the relevant case laws, to make sense of the Indian Republic. These commentaries run into several volumes, making it an arduous task for a student to achieve even a rudimentary understanding of the Constitution, let alone digest it. Khosla's book, in the form of the long essay, is, therefore, a welcome alternative for those who are uninitiated and would like to familiarise themselves with the issues the Constitution has given rise to over the years.

The book fills a vacuum in the area of political studies of the Constitution. The much-cited study by a political scientist, to date, is *The Indian Constitution: Cornerstone of a Nation* by Granville Austin, which was published in 1966. Austin's second book, *Work-*



IN REVIEW

The Indian Constitution by Madhav Khosla; Oxford University Press, 2012; pages 191, Rs.195.

ing a Democratic Constitution, was published in 1999 and is a masterpiece on the milestones in the evolution and working of the Constitution. By and large, however, Austin's work adopts the chronological method to compile the developments, leaving the reader interested in a conceptual understanding of the Constitution hungry for a

different book. And here lies the second surprise: undaunted by the tomes produced by insightful scholars before him, Khosla compresses the entire discussion thus far on the Constitution into four convenient chapters: separation of powers, federalism, rights and goals, and changing the Constitution. A book similar in title to Khosla's, *Introduction to the Constitution of India* by D.D. Basu, was published in 1981. It had 31 chapters running into 436 pages and discussed the subject Article-wise instead of thematically.

Short on legalese, the book woos even an otherwise uninterested reader, as if it promises a gripping story. This is how Khosla begins his Introduction: "It was the winter of 1946, and over three hundred men and women had come together. Travelling from varying intellectual traditions, and holding diverse descriptions of a free nation, they formed the Constituent Assembly. It was the body vested with the all-but-easy task of drafting a Constitution for independent India. The assignment was one that would take them almost three years, and make them participants in an extraordinary experiment in human history."

Khosla's aims are modest. He writes: "The document is complex with provisions that are prolix, and I hope that this book can help explain its architecture while gently touching upon some of its themes. Readers will get a tour of the Constitution.... I hope, how-

ever, that some questions I shall raise will stimulate debate about our constitutional culture, and encourage engagement with this fascinating text. While in certain places I push the envelope and explore a thesis, my ideas are often inchoate and hope to provoke rather than persuade.”

And it is on certain controversies over the interpretation of the constitutional provisions that Khosla makes his position explicit, irrespective of what the Supreme Court might have held. In 2003, Parliament amended the Representation of the People Act, 1951, to remove the domicile requirement for membership of the Rajya Sabha (the Council of States), as Members of Parliament were uncomfortable with the interpretation that members elected from a State must ordinarily be residents of that State. When the eminent journalist Kuldip Nayar challenged the amendment, the Supreme Court reasoned that residence was not a constitutional condition for representation. Khosla feels that the court failed to explicate what the requirement of representation in Article 80 entails and how it could safeguard State interests if it did not do so through the residence requirement.

Similarly, Khosla laments that the anti-defection law gives legislators no room to vote their considered opinions and thereby express impartial views, something thought to be central to preserving the dignity of law. According to him, the anti-defection constraint ought to be limited to cases involving a vote of confidence or a no-confidence motion.

Khosla describes the Supreme Court's clean chit to the MPs who took bribes to vote against the no-confidence motion against the P.V. Narasimha Rao government in 1993 as a result of “an impoverished understanding of the immunity granted by Article 105”. The purpose of the immunity is to protect MPs from being liable as a result of something they may say or a vote they may cast. The Supreme Court broadly construed Article 105 to mean protection for all actions that relate to or concern or have a connec-



FORMER PRIME MINISTER

P.V. Narasimha Rao is escorted from a special court in New Delhi on October 12, 2000, after being sentenced to three years in prison for bribing lawmakers to back his government in 1993. The book points to an absurd situation created by the Supreme Court order in the case.

tion or nexus with the actual act of voting in Parliament. The court's reasoning resulted in an absurd situation: one MP who allegedly took a bribe was denied immunity since he had abstained from voting.

The doctrine of separation of powers makes a scholar take a position on a given issue and support either Parliament or the judiciary. Khosla is no exception. Does the judiciary have the power to review Parliament's powers? Yes, indeed, if it pertains to its power to expel a member from the House, as it does not possess conclusive powers under the Constitution in the first place, Khosla says. He is also on the side of the judiciary on the question of the appointment of judges. He is happy with the outcome of the Supreme Court Advocates-on-Record Association case, which was decided in 1993, which made a collegium of judges, headed by the Chief Justice of India, enjoy primacy over the executive in the matter of appointment of judges.

Khosla points out that the collegium's advice is not binding on the executive for the first time, but if the advice is repeated after a unanimous decision

by the collegium, then it ought to be respected. Many would disagree that this singular feature of the appointment process provides the necessary checks against arbitrariness. The system of collegium itself has come under criticism for its bias and prejudices, but Khosla has avoided discussing this, probably for space reasons.

He discusses the issue of judicial activism in a nuanced manner. According to him, the constitutional text establishes and envisages an extremely powerful Supreme Court, which is both an appellate and a constitutional court. He rebuts the argument that the Constitution recognises the supremacy of the Constitution as a *dues ex machina*, for there is disagreement on what the Constitution says, and not the supremacy of the courts.

In another chapter, he disagrees with the view that we have an activist judiciary merely because the courts appear to be taking on the roles of the executive. A study of many cases has convinced Khosla that the Indian judiciary follows a conditional approach while adjudicating social rights cases involving the non-justiciable Directive Principles of State Policy. That is, the court steps in if a social welfare scheme, which has been initiated, is not being implemented appropriately.

The chapter on “Separation of Powers” concludes with the significant observation that the Constitution is striking insofar as it mandates an internal separation of powers within all the three traditional branches of government, and in this way shapes the institutional dynamics of its democracy. Khosla explains adequately the internal separation of powers within the legislature and the executive but assumes rather naively that the collegium system can achieve internal separation of powers within the judiciary. On other issues, Khosla makes passing but provocative comments. Take for instance his position on Article 370. He says Article 370(3) was drafted to provide an exit route for the State of Jammu and Kashmir, to constitutionally enable it to disembark from the Indian ship. The existence of

Article 370, therefore, is meaningful for the reason that it confirms the State's place in the Indian Union, he suggests, and adds that without it nothing binds the State to the Indian Union.

Khosla makes a marvellous contribution to the understanding of caste in Indian jurisprudence. He answers in clear terms the simple question whether the Constitution prohibits the use of caste in all circumstances. Some scholars and some judgments of the Supreme Court have held that the Constitution is caste blind and that caste cannot be used in any form whatsoever. But Khosla makes a subtle distinction, saying the Constitution is asymmetric towards caste: it rests on the distinction, between benign and invidious discrimination.

Again, he makes a subtle criticism of the Supreme Court's judgment in *M.R. Balaji vs State of Mysore* (1963), which held that reservation should never cross 50 per cent, for no exception can be so large as to swallow the rule. The Balaji court viewed reservation as an exception to the general guarantee of equality, whereas the proponents of substantive equality do not see it as an exception. To him, Balaji failed to notice the asymmetric principle and walked down the rule-exception (exception proves the rule) path. The 50 per cent limit continues to bind the Supreme Court's decisions on reservation, and the legal controversies over this court-imposed arbitrary limit have not yet been resolved even though in subsequent cases after Balaji the court recognised the asymmetric principle, without actually calling it so. Khosla explains that the 50 per cent rule is an attempt, albeit arbitrary, to preserve the distinction between benign and invidious discrimination. Anything beyond this limit raises the suspicion that the form of discrimination must be invidious, he clarifies.

Could the Supreme Court have approached the issue differently? Khosla suggests that the judiciary could have taken on the burden of judging backwardness and assessed whether the

thin distinction between benign and invidious discrimination is preserved in each case. He is dissatisfied with the Supreme Court's judgment in the Mandal II case (*Ashok Kumar Thakur vs Union of India*, 2008) because it failed to follow the Aristotelian notion that like cases be treated alike and different cases be treated differently. In this case, the Supreme Court upheld the reservation for the Other Backward Classes (OBCs), the Scheduled Castes (S.Cs), and the Scheduled Tribes (S.Ts) in educational institutions. It was erroneous, he suggests, to have permitted the same special treatment for the OBCs on the one hand and the S.Cs and the S.Ts on the other without any historical or empirical basis. Khosla is concerned that the present scheme of affirmative action is going beyond the original constitutional ideal of transcending caste and that the Constitution is being understood as a document that grants equality through caste.

BASIC STRUCTURE DOCTRINE

In the last chapter, Khosla raises an interesting question, whether the Supreme Court is correct in restricting the application of the basic structure doctrine to only constitutional amendments and not to ordinary law: that is, a law made by Parliament or a legislature can violate the basic structure of the Constitution but not an amendment to the Constitution. This bizarre conclusion was the basis of the Supreme Court's decision rejecting Kuldeep Nayar's petition challenging an amendment to the Representation of the People Act removing the residence requirement for candidates contesting Rajya Sabha elections. He challenged the amendment Act (an ordinary law, rather than a constitutional amendment) as infringing upon the basic structure of the Constitution, which includes separation of powers.

Khosla also disagrees that power has shifted to the Supreme Court under the basic structure doctrine. The truth is that hardly any basic structure challenge has been successful, he says. This is because for an amendment to

fall foul of the doctrine it must "destroy or damage" the basic features of the Constitution. The threshold for establishing hurt is thus high, he says.

He is right in suggesting that the basic structure doctrine represents an effort to distinguish between a constitutional amendment and a revolutionary action. It invokes the terms on which power is delegated from the sovereign people, critiquing Parliament's power to fully represent the people. Yet it suffers from a serious problem, as he explains: the sovereign people have limited institutional means for voicing their preference for constitutional change. It is not clear whether Khosla will endorse, like the senior advocate and social activist Prashant Bhushan, the demand for referendums on various intractable policy issues.

He admits that the basic structure doctrine rests on abstract principles, which are difficult to identify with particular provisions of the Constitution, and that is why the courts have been unable to strike down any amendments to the Constitution on the grounds that they violate the doctrine. Another reason he cites is the Constitution's increasingly asymmetric character, which has made it more difficult to determine and thus notice departures from the basic structure.

Khosla believes that asymmetry has helped cater to claims for recognition and address serious social problems. But he warns that its widespread use could dilute national citizenship, create compulsory identities and inhibit an understanding of which first principles govern us. The author realises that he may have exaggerated asymmetry's implications but cautions us from ignoring it altogether.

On the whole, the author and the publisher deserve to be congratulated on bringing out a lucidly written, easily digestible, yet comprehensive book on the Indian Constitution. The list of references and the special section on further reading appended to the book will help interested readers explore the subject further. The price, too, is an incentive for anyone who wants to possess a personal copy. □

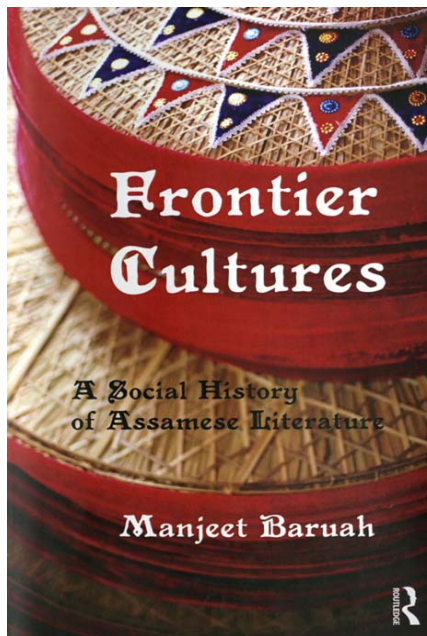
Thirst for identity

The book introduces the reader not only to Assamese literature and political history but also to the Assamese mentality. BY ARINDAM BORKATAKI

THE geographical location of the north-eastern States has always deprived them of a central Indian identity. Even in the past, the cultural variety of this region had been a hindrance to its assimilation into the Indian identity. Sometimes such obstacles have arisen because of the pre-imposed ideas of the flag-bearers of the Aryan culture and sometimes as a result of the local inhabitants' urge to find and establish a self-identity created by the influence of the Mongoloid culture.

Of course, this difference was political, created by the political formality of the creation of the Indian Union. But culturally, the relation or link between Assam and the rest of India can be found in innumerable examples such as the legendary marriage of Krishna with Rukmini, the daughter of Kamrup, and the Assamese version of the Ramayana composed by Madhab Kandali as far back as the 14th century. Even so, if the culture of the region is identified as frontier, then the question naturally arises as to whether the reason for this is geographical, political and economic, or lies in the local people's mentality.

The same way as an Indian identity of the north-eastern region cannot be found in the national capital's background, it is almost impossible to search for an Assamese identity in the background of mainland Assam. The fact remains that in both cases, though a desire for colonial dominance still exists, deep down in the consciousness of the people there lies an urge and need to establish an identity. This urge is political, but at the same time the linguistic and cultural diversity of the



IN REVIEW

Frontier Cultures: A Social History of Assamese Literature by Manjeet Baruah; Routledge India 2012; pages 205, Rs.595.

north-eastern region has resulted in an emotional and literary expression of the urge to establish a self-identity. Academic discourses follow only theoretical aspects in the studies relating to self-identity.

It is a matter of great pleasure that Manjeet Baruah has included both historical and linguistic aspects as the subjects of his study and has taken literature as the source of social history in his book *Frontier Cultures: A Social History of Assamese Literature*. His major interest is to discuss the main reasons for the creation of a frontier

culture and also to find out the source of frontier literature, which can be considered or assumed to be created by the people living on the country's borders.

The book poses two questions: what is our involvement in and contribution towards the social history of written traditions and towards the social history of the region's formation using written tradition as empirical evidence. The book argues that both questions can be taken care of by looking at written traditions as forms and modes of mapping socio-spatial relations. On the question of region formation, the specific argument of the book is that crossroads should be distinguished from frontier. In most of the available research on borderlands, this distinction is generally not made. To make the distinction, the book proposes the principle of dialectic between the shared and the distinct (that is, what communities share and how they differ) in socio-spatial relations. It is through this dialectic that communities maintain and map their relations.

The Brahmaputra Valley, as a pre-colonial crossroads, was marked by this principle. But as a frontier since the 19th century, it came to be marked by the erosion of this dialectic, leaving behind only an awareness that the difference between the two was part of the making of the frontier. The shift from a crossroads to a frontier is the historical argument that the book presents in studying region formation. In this regard, it suggests that an awareness of identity is essential to social processes. What is historical is what is done with that awareness in the context of time. With regard to the Brahmaputra Valley, therefore, awareness



RITU RAU KONWAR

ASSAMESE WOMEN, DRESSED in traditional clothes and holding tapis, perform the Bihu dance on the occasion of Rongali Bihu, in Guwahati on April 13, 2011. Rongali Bihu marks the advent of the Assamese New Year.

or politics of identity needs to be situated in the existence or erosion of this dialectic of what communities share and how they differ from each other. The discussion of written traditions, whether of *buranjis* (chronicles), neo-Vaishnava performance literature or various modern writings, has been situated in this overall context of shift of a historical crossroads into a frontier.

The initial part of the book discusses the question of Assamese identity, centring it around the Assamese language, the root of which has been discussed through history and culture. But the question of an identity for Assam and the Assamese people in the national context continues to be a cause for contradiction. Instead of being an answer to the problem, it has always remained a question.

Manjeet Baruah must have relished this, and hence wonders at the

beginning of the book: "The question that rocked me was that if identity is so important and if its consciousness is a concrete reality, why could the region not come up with a common politics for almost eight decades now?" There was a time when the diversity of the north-eastern region was never a cause for linguistic, cultural or social conflict. But with changing times, the region, instead of being a part of the Indian Union culturally, has become a part of it politically. So a relation of difference in reality has become a relation of contradiction.

In this context, Manjeet Baruah refers to the challenges Bishnuprasad Rabha, the well-known Assamese poet, dramatist and artist, faced in communicating his art to the grass roots. Rabha had said that Assamese literature could not become an identity maker of its people. It could only rep-

resent a relation among the diverse communities, and in order to achieve it, both language and narrative had to be code-mixed. The various strategies that he adopted, whether through literary devices or through performing arts, were aimed at creating an art that could re-establish the eroded dialectic without being reactionary. Rabha tried to re-establish a new dialectic. Manjeet Baruah proposes that culture instead of being an issue of conflict and contradiction could be one of the most powerful means of creating the politics of relation.

Frontier Cultures tries to illustrate how literature engages with such historical socio-spatial shifts. Socio-spatial relations ought to be marked by class rather than by ethnicity or ideas of nationalism or ideas of a romantic past. The book discusses authors and literary strategies, and about the nature and role of the Assamese language, which finds a place in their writings, and wonders whether, on the basis of recent trends in Assamese literature, it can transcend the problem of representation of its social base and conceptually graduate into the emerging domain of north-eastern Indian literature.

A reading of Manjeet Baruah's book introduces us not only to Assamese literature and political history but also to the Assamese mentality. The book also helps us realise the fact that the urge to search for self-identity or even politics lies close to the cultural heritage of a community. As has been mentioned earlier, the same way as Assam is frontier in comparison to other parts of India, many culturally prominent places are frontier in comparison to the Brahmaputra Valley. The thirst for identity created by this frontier mentality has always enriched the Assamese identity of the Brahmaputra Valley. This identity can definitely be a subject of a new study and discourse. *Frontier Cultures* bears a hopeful probability of such a prospect. This book will be of interest to those in the fields of sociology, history, post-colonial studies, literary studies and literature. □

Colouring Faulkner

Described by its author as “a real son-of-a-bitch”, “The Sound and the Fury” is notoriously difficult. Does a colour-coded version help? BY SARAH CHURCHWELL

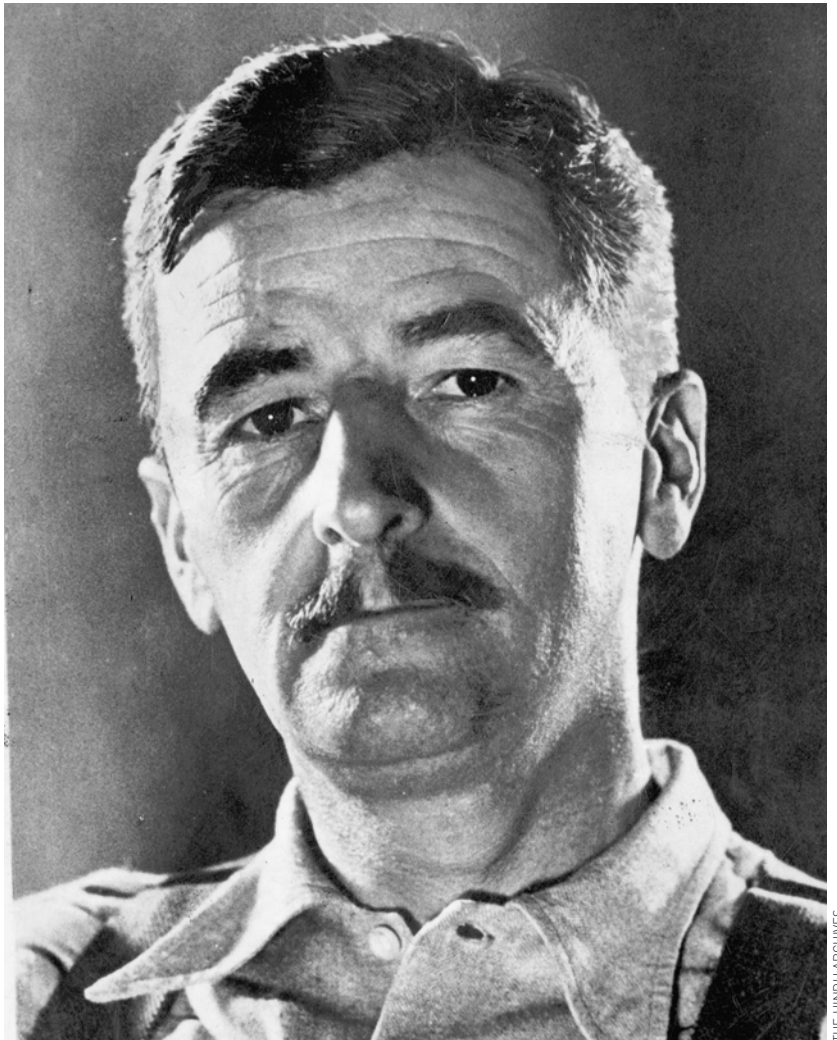
WHEN William Faulkner was asked by *The Paris Review* to share his thoughts on the art of fiction in 1956, he offered several useful pieces of advice to the aspiring author. “A writer needs three things, experience, observation, and imagination – any two of which, at times any one of which – can supply the lack of the others,” he declared. A writer must learn the tools of his trade; Faulkner’s were “paper, tobacco, food, and a little whiskey”. “Bourbon, you mean?” asked the interviewer. “No, I ain’t that particular,” Faulkner said. “Between Scotch and nothing, I’ll take Scotch.” And what would he say to people who complained that they could not understand his writing, even after they had read it two or three times? “Read it four times,” he suggested.

Perhaps Faulkner was thinking of his 1929 novel *The Sound and the Fury* when he said this, as it is a book that takes the reader through the same story four times, from the perspective of four different characters – at which point readers just might, with luck and perseverance, have managed to piece together the narrative. When he finished the novel, Faulkner took it to his friend and acting agent, Ben Wasson, and said to him: “Read this, Bud. It’s a real son-of-a-bitch.... This one’s the greatest I’ll ever write.” It took a while to catch on, but for the last half-century readers have agreed with Faulkner: for many, *The Sound and the Fury* is his greatest novel, and for almost everyone, it is a real son-of-a-bitch.

Notoriously, intransigently difficult, the novel takes its title from Macbeth’s reflection that life is “a tale /

Told by an idiot, full of sound and fury, / Signifying nothing”. It opens inside the mind of the “idiot”, Benjy, a 33-year-old man who has the mind of a small child. (Benjy used to be described as “severely retarded”; he is

now sometimes called “autistic”, but as he is a fictional character in an era when such diagnoses were unavailable, it makes no sense to argue over what is “really” wrong with Benjy.) Faulkner uses stream-of-conscious-



THE HINDU ARCHIVES

WILLIAM FAULKNER SAID of “The Sound and the Fury”: “This one’s the greatest I’ll ever write.”

ness narration to suggest the way that Benjy's mind flows through time: memory, reality and emotion meet, shift, and kaleidoscopically recombine.

Benjy does not understand what is happening around him, and so cannot narrate the events he sees; Faulkner forces the reader to work out what is happening (and when) from the clues he drops. It is a kind of detective fiction, the kind that drives some readers crazy: but it also is a *reductio ad absurdum* of the act of reading itself. All reading requires the reader to infer meaning: the first chapter of *The Sound and the Fury* turns inference into an extreme sport. It moves through 14 different moments across a 30-year period in Benjy's memory, often without any overt signal to the reader that a shift in time has just occurred.

At various points in Benjy's narration, Faulkner decided to use italics "to establish for the reader Benjy's confusion; that unbroken-surfaced confusion of an idiot which is outwardly a dynamic and logical coherence", he explained in a letter, adding: "I wish publishing was advanced enough to use coloured ink for such, as I argued with you and Hal in the speak-easy that day.... I'll just have to save the idea until publishing grows up to it."

COLOUR-CODING

It seems that time has now come: Stephen M. Ross and Noel Polk, two distinguished Faulkner scholars, have created a colour-coded version of *The Sound and the Fury* that the Folio Society is printing in a limited edition of 1,480 copies, each numbered by hand, on Abbey Wove paper with a gilded top edge, and quarter-bound in vermilion Nigerian goatskin leather blocked in gold; accompanying Faulkner's novel is a matching "line-by-line commentary and glossary" written by Ross and Polk. The sumptuous two-volume set will set readers back £225 (\$350).

If some might balk at the conspicuousness of such consumption, others will appreciate the continuing effort to reinvent bound books as *objets d'art*

in an age of electronic publishing. The edition is unquestionably beautiful, a bibliophilic fantasy: the less aesthetic question is whether colour-coding helps or hinders us in interpreting Benjy's section.

It is not a question that Ross and Polk presume to answer easily; indeed, they acknowledge, it raises new questions: "[I]n being so precise, they [the colour-codings] impose on the text a 'reading', a third dimension, that the black-and-white text does not and so deny the reader the free play at work in the two-dimensional black-and-white, roman-and-italic text that is at once so daunting and exhilarating." The editors understand the risks, but they think it worth the experiment: "Each reader will need to decide for him- or herself," they conclude.

Reading the colour-coded version kept reminding me of a line from Iris Murdoch's *The Bell*: "The conversation was not so much difficult as mad." Attempting a simple plot summary of *The Sound and the Fury* can bring on a migraine, and is an exercise in futility; trying to annotate it line by line, while painting each of Benjy's thoughts in a colour that has been matched to a particular point in time, feels like the project of a deranged scholar locked in some lunatic literary experiment devised by Jorge Luis Borges. And yet, as Borges also shows, such madness is the madness of art, like the brilliant, bonkers endeavour of Alfred Appel to annotate all of Nabokov's *Lolita*. It is fascinating, disruptive, distracting, maddening and enlightening, making a rainbow of Faulkner's stream of time.

The Sound and the Fury remained Faulkner's favourite; it was his fourth novel, and the second that he placed in fictional Yoknapatawpha County, Mississippi ("my apocryphal county", he called it). *The Sound and the Fury* constituted an artistic breakthrough into the "sheer technical outrageousness" that would characterise such celebrated later works as *A Light in August*, *As I Lay Dying*, *Go Down, Moses* and the book that I, for one, would crown as Faulkner's masterpiece, the dazzling *Absalom, Absalom!*

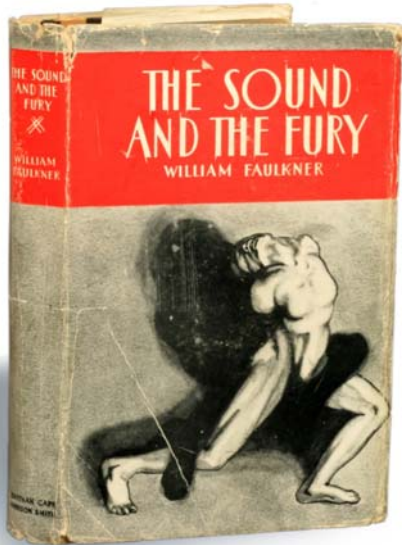
He did not stop there: eight more novels and at least half a dozen short stories were set in Yoknapatawpha, which Faulkner eventually mapped; he drew up genealogies and wrote afterwords and explanations, detailing the fates of the three families at the centre of his mythical world: the aristocratic Compsons and Sartoris, and the parvenu Snopes. Together they tell the story of the decay of the American South.

William Faulkner was born William Cuthbert Falkner on September 25, 1897, in New Albany, Mississippi; soon his family had relocated to Oxford, the town where he would live the rest of his life, and reinvent as the fictional Jefferson. When the young Falkner tried to join the air force in 1918, he was rejected for being too short.

Deciding to pass himself off as an Englishman and enlist in the Canadian RAF, he changed the spelling of his name to Faulkner and invented a mythical British family for himself, using a forged letter of reference from one Reverend Edward Twimberly-Thorndyke. For whatever reasons, he never changed the spelling back when he went on to invent the equally mythical clans of Yoknapatawpha.

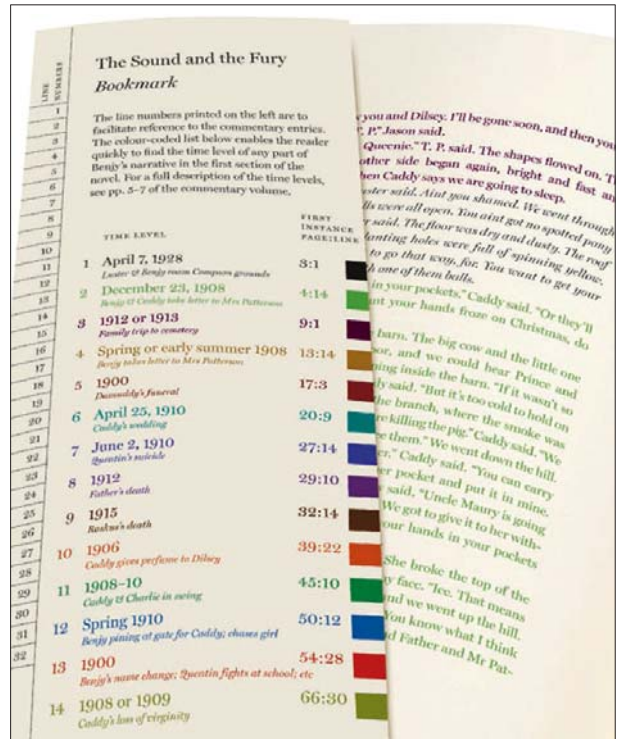
Faulkner never saw active service; in 1925 he published his first novel, *Soldier's Pay*, followed rapidly by *Mosquitoes*. He was convinced that his next novel, *Flags in the Dust*, the first Yoknapatawpha story, was his best yet, but to his shock his publishers turned it down; heavily edited, it was eventually published as *Sartoris* in 1928. The experience, said Faulkner, led to the breakthrough of *The Sound and the Fury*, as he gave up on publishers and set out to write the book he wanted to write.

"Now I can make myself a vase like that which the old Roman kept at his bedside and wore the rim slowly away with kissing it," he claimed to have told himself. "So I, who had never had a sister and was fated to lose my daughter in infancy, set out to make myself a beautiful and tragic little girl." There is more than a little mythmaking in such



AN OLD EDITION of the book.

(RIGHT) FROM THE new colour-coded version of Faulkner's masterpiece.



THE FOLIO SOCIETY

an account: but then mythmaking was already Faulkner's stock-in-trade.

Although his books were admired by other writers, Faulkner lived and wrote in relative obscurity for the first decade or so until he wrote a bestseller called *Sanctuary* in 1931; it owed its success to its scandalously violent sexual content, including a scene in which a young woman is raped with a corn-cob and is turned by this experience into a prostitute for no apparent reason other than Victorian morality. Chronically hard up, Faulkner found his way to Hollywood, where he collaborated on several now legendary screenplays, including *Mildred Pierce*, *To Have and Have Not* and *The Big Sleep*. In 1949, he was awarded the Nobel Prize for literature, and two of his subsequent novels, *A Fable* and *The Reivers*, which was published posthumously in 1962, won the Pulitzer.

The Sound and the Fury is the story of the Compson family's decline and fall; when Faulkner was asked by a student why the Compsons are such a disaster, he answered: "They live in the 1860s." The novel ranges from 1900 to 1928, but the Compsons remain

trapped in the obsolete attitudes and ideas of the South in the years of the civil war, destroyed by their futile attempts to live by dying prerogatives of class, race and sex. The book resembles a Greek tragedy, telling the story of Caddy, the "lost woman", from the point of view of her three brothers – each of whom is also, in an important way, lost – and then finally from the perspective of the Compsons' black servant, Dilsey.

Caddy is the novel's absent centre, the focus of all the characters but unreachable and unknowable – like the truth itself, some would say, as Faulkner offers only competing, subjective accounts. But the novel is also layered with what Faulkner called "counterpoint" – careful patterns of words and images to create an artistic unity that transcends the fragmented perspectives on display.

He claimed this "tragedy of two lost women: Caddy and her daughter" came to him first as an image of a little girl with symbolically muddy drawers; he loved it most, he said, because it "caused me the most grief and anguish, as the mother loves the child who be-

came the thief or murderer more than the one who became the priest". *The Sound and the Fury* was always the book that Faulkner felt "tenderest toward", he said, "the most gallant, the most magnificent failure" of all his novels. "I couldn't leave it alone, and I could never tell it right, though I tried hard and would like to try again, though I'd probably fail again." In 1998, the Modern Library ranked it the sixth greatest English-language novel of the 20th century, but Faulkner might have claimed to be unimpressed: "I don't care about John Doe's opinion on my or anyone else's work," he told *The Paris Review*. "Mine is the standard which has to be met, which is when the work makes me feel the way I do when I read *La Tentation de Saint Antoine*, or the Old Testament." Ultimately, he insisted, "the writer's only responsibility is to his art". If it made a writer ruthless, that was a price William Faulkner thought the world should be prepared to pay: "If a writer has to rob his mother, he will not hesitate; the 'Ode on a Grecian Urn' is worth any number of old ladies." □

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Crimes of the tongue

On speech offences and the personal dynamics underlying them. BY A. G. NOORANI

THIS is a delightful and instructive survey of dangerous talk among ordinary people in England from the late Middle Ages to the present. Its focus is from the 16th to the 18th century. It reminds one of the compilation *Treason and Libel: State Trials*, Vol. I edited by Donald Thomson (Routledge, 1972). It covers 10 trials from 1535 to 1817.

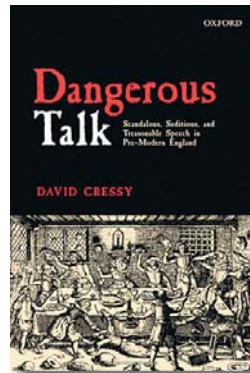
The author eavesdrops on conversations and recalls the deadly language that was used in all its vigour. Such chatter collided with the law, as it does in a varied manner to this day. However, we have a ruling of the Bombay High Court that “mere vulgar abuse” does *not* constitute insult. At a meeting of shareholders, a proposal was made to expel the accused from the company. He flew in rage and muttered as he left, “You damned bloody bastards and cads.” This was overheard by some, and the accused was prosecuted under Section 504 of the Indian Penal Code. The court held that no offence was committed; that there was no intention to insult as the words were not to be taken literally but were intended as a mere abuse.

The accused was protected by Section 95 of the IPC. It is exquisitely worded: “Nothing is an offence by reasons that it causes, or that it is intended to cause or that it is known to be likely to cause, any harm, if the harm is so slight that no person of ordinary sense and temper would complain of it” (*Emperor vs Rangel* (1932)-34; *Bombay Law Reporter*; 282). To the same effect is the Supreme Court’s ruling in *B.R. Meena vs Mangal Das* (1987); Supp SCC; 597. The times have changed. This book is evocative of the vigour of language in former times and the intolerance of the

state and the courts. The vigour is gone; the intolerance has survived.

The author’s aim “is to reconstruct the circumstances of speech offences and the personal dynamics and ideological frictions that may have underlain them. By examining depositions, answers and rebuttals, as well as letters, indictments, accusations and commentary, I hope to calibrate the weight and force of dangerous utterances. Research of this sort is slow and frustrating, with gems of information among many dead ends. But piece by piece it reveals the workings of English justice, the relationship of the Crown and subjects, and the political force of everyday language. It contributes, I hope, to an integration of social and political history, historical sociolinguistics, and the history of law.” This indicates the pains he has taken.

In the past, women were singled out as slanderers and visited with severe punishment. Class distinctions vanished. “The records are also rich with examples of disorderly speech among people of higher social status. Gentlemen, clerics and members of the professions were expected to watch their language, but sometimes their passion got the better of them. Like villagers and townsfolk, the educated elite occasionally succumbed to offences of the tongues. It was always shocking to hear abusive language from people whose speech was supposed to be civil and polite.”



BOOK FACTS

Dangerous Talk: Scandalous, Seditious, and Treasonable Speech in Pre-Modern England by David Cressy; OUP; pages 374.

Shakespeare’s characters were none too civil. “In the First Part of *King Henry IV*, the prince calls Falstaff ‘thou whoreson, obscene, grease tallow catch’, and ‘thou whoreson impudent embossed rascal’. Petruchio in *The Taming of the Shrew* addresses Grumio, ‘you whoreson malt-horse drudge’. Doll Tearsheet in *The Second Part of King Henry IV*, curses, ‘a pox damn you, you muddy rascal ... you scurvy companion ... you poor, base, rascally, cheating, lack-linen mate, away you mouldy rogue’, and calls Pistol ‘the foul-mouth’d st rogue in England’. In *The Comedy of Errors*,

Antipholus berates Dromio, ‘thou whoreson senseless villain’, and calls Adriana ‘dissembling harlot, thou art false in all’. ‘You whoreson dog, you slave, you cur’, shouts King Lear at the hapless Oswald. The disguised Duke of Kent calls the same unfortunate character ‘knave... rascal... rogue... and varlet’ in a powerful cascade of abuse. “Rogue, rogue, rogue,” cries Timon of Athens to the philosopher Ademantus. These were dramatised versions of the speech reported in hundreds of defamation cases.”

As with slander, sedition has also undergone radical changes in its import. Over the centuries, treason, sedition and slander acquired different connotations, but the tension between freedom of speech and national security concerns persisted. □

New assertiveness

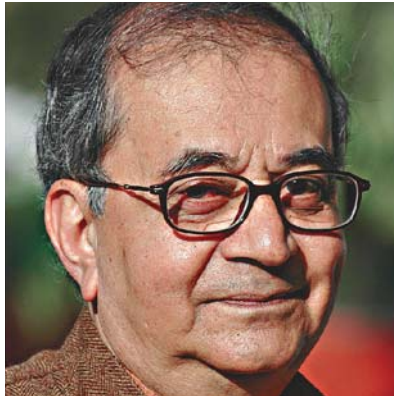
Women are demanding their place in the sun and usually getting it, but there are also packs of louts who see them as easy prey, so clashes are inevitable.

In recent weeks, in fact in recent months, and, if one were to step back a little more, in the last few years, atrocities against women, especially – if not exclusively – against young women, has increased, perhaps more in the northern States of the country than elsewhere. They have been assaulted, sexually and otherwise, tortured and murdered. Some have been kept imprisoned for months on end, others sexually assaulted repeatedly by more than one man.

While a number of these cases have been reported to the police, many have not been for fear of repercussions, of social ostracism and other factors. In other instances the police themselves have not registered cases because their reports may look less impressive and they may be required do extra work (go and look for the accused, apprehend him if possible, bring him back, start a case, write up the investigation, get the medical reports required and other tiresome details) or because the accused is influential.

One has only to look at the way the police have handled the case registered after the suicide of Geetika Sharma, a former employee of MDLR, a defunct airline owned by Gopal Kanda, a Member of the Haryana Legislative Assembly. The girl named Gopal Kanda in her suicide note as one of the two persons responsible for her suicide. The other person, a woman called Aruna Chadha, has been arrested. But Kanda, who was until recently a Minister in the government run by Bhupendra Singh Hooda, has not yet been touched. He has given a number of television interviews, and the channels knew where he was, but the police claimed they could not trace him.

One is not judging him before he is



Point of View

BHASKAR GHOSE

tried; but surely in such cases those accused directly by the suicide victim should be questioned, if nothing else, to determine the actual facts? The Delhi Police, in whose jurisdiction the suicide took place, claimed that they could not find him, and the less said about the Haryana Police the better. There has, at around the same time, been a report of a young woman being gang-raped by some nine men in Faridabad, Haryana, bordering Delhi. She apparently knew one of the men. He, according to media reports, called her up late at night and asked her to intercede and resolve a quarrel between him and his girlfriend, who was a friend of the victim.

A few days later the media reported the murder of Pallavi Purkayastha, a legal adviser to a leading film production company, apparently by the security guard of the apartment block where she and her boyfriend lived. According to media reports, the security guard switched off the power to the

flat, forcing her to go down to ask him to call the electrician. When he came up with the electrician, he seems to have removed the house keys that the victim may have left on a table or somewhere. Then he came back, let himself in and tried to assault her; when she resisted, he slit her throat.

Some years ago, there were two terrible cases in Delhi. Soumya Vishwanathan, 21, was shot dead as she was driving home late from the television station where she worked. Jigisha Ghosh, a manager with an Information Technology (IT) office, was kidnapped as she got out of her car when she returned from work late at night and murdered.

These are some of the shocking, tragic cases that were reported. There have been others, many others, as terrible and as tragic. And apart from those, thousands of instances of louts, who always move in groups making obscene remarks at girls, openly, in public places. One horrifying account by one such lout given to the police was that he and his fellow louts got together and drank, and then “felt they should get a woman”. So they cruised the streets until they found a young woman returning from work, or coming out of a restaurant or pub, and then forcibly picked her up and gang-raped her, after which they threw her out of their car.

Disgusting though these are as examples of young men whose births are greeted with much celebration, the point of this article is slightly different. It is what one has, as an old man, witnessed with admiration over the last few years – the emergence of young women as educated, employed individuals who are not afraid to take their rightful place in society as equals



K. MURALI KUMAR

MEMBERS OF THE All India Mahila Samskritik Sanghatan (AIMSS) protest against the molestation of a girl in public in Guwahati and demand that the government implement laws to protect women, in Bangalore in July.

to men and women their age. It is not that there have not been young women who have been pilots, even commanders, of jet aircraft operated by different airlines in the country; or in managerial positions in banks and IT companies and in media companies. But there is a difference between those who were there – and still are – a generation ago, and those getting to such positions now. The difference is that members of the earlier generation did their jobs and kept a low profile, hurrying home to a husband and children, or to elderly parents. The present and

emerging generations are more assertive, demanding their place in the sun, and usually getting it. They are in the thick of several agitations and protests, playing leading roles, and they refuse to conform to the stereotype of the young, accomplished woman eventually “settling down”, that is, getting married, having children and becoming both home-makers and working women.

One can see more and more young women leading more active social lives, as their male friends do; more and more having live-in relationships,

of which one lot were, until recently, rather secretive but others today are not. Young women go to bars and nightclubs as men do, except that they are, from what one hears, always part of a group or with a male friend. They do go home alone, but not too late, and, as one young financial executive told me, she locks the doors of her car – which she drives herself – and does not pay too much attention to traffic rules. “I have to survive,” she said, meaning, of course, the Delhi traffic, but I think she also meant it in a slightly wider sense.

There are also packs of louts who have emerged, chiefly in the new metropolitan cities. They have money to spend – their families having sold land for the rapidly growing apartment complexes – have little education and no need to work. When they see young women whom they consider “easy prey” they think nothing of trying to molest them if they are not with a group, and if they are the end result is often a vicious brawl, with the police treating it as such and not bothering to establish who the louts were and dealing with them.

Some brave women’s groups have now been formed to combat such attempts to dominate, which is finally what it is about, as is the brutal killing of young women who have dared to love someone outside their caste or community and which the media, with their usual distortion of English, call “honour killings”. Until we stop being content with expressing outrage and indignation we will remain a sick, diseased society. There will be stronger, more assertive young women, but also more troll-like, barely educated young men. And there will inevitably be clashes, in which the young women will pay a heavy price.

The solution is in the hands of the young and the not so young. Perhaps “solution” is not the right word; there cannot be one really, but what there can be is enough mutually expressed anger through the media and protests that frighten our usually complaisant, morally malleable political class to take some concerted action. □

A NEGLECTED HERO

Among the liberals in the early days of the freedom struggle, Chimanlal Setalvad stood out for his integrity and keen sense of realism. **BY A. G. NOORANI**

He said the Congress sabotaged the Cabinet Mission's Plan, the last chance to preserve India's unity, and predicted that Jinnah's "personal triumph", the formation of Pakistan, would sow the seeds of "suffering to generations yet unborn".

"The attitude of the British towards India's claim for freedom has since the Mutiny of 1857 undergone a complete change. There was a time when the British government held the view which was a complete negation of India's claim for freedom. It was proclaimed by Lawrence, whose statue in Calcutta has the motto: 'The British conquered India by the sword and they will hold it by the sword.' This attitude is dead and buried and it is no exaggeration to say that every Englishman today is ashamed of it. This stage was followed by another in which the argument of the British government against India's freedom was the alleged incapacity of Indians for parliamentary institutions. It began with Lord Ripon's regime which was followed by an attempt to give political training to Indians, first in the field of local self-government, and then under the Montague-Chelmsford reforms in the field of provincial government. We have now entered the third or the present stage. The British government is now ashamed to say that they will hold India by the sword. It no longer says that Indians have no capacity to run parliamentary institutions. The British government admits India's right to freedom, even to independence, if Indians so desire. The British government admits the right of Indians to frame their own constitution. There can be no greater proof of this new angle of vision than the Cripps proposals [1942]. The condition precedent laid down by the British government for India's freedom is that Indians must produce a constitution which has the concurrence of the important elements in the national life of the country. Such is the stage we have reached. The Untouchables cannot

therefore understand why the Congress, instead of trying to achieve agreement among Indians, should keep on talking in terms of a 'Fight for Freedom' and maligning the Untouchables in not joining in it. ...

"But when, instead of making an honest and sincere attempt to bring about an agreed constitution, the Congress goes on launching its campaigns for achieving freedom – not without occasional rests and retreats – the only conclusion which the Untouchables can draw is that the Congress wants to coerce the British government to transfer its power or, to use Mr Gandhi's phrase, 'hand over the keys to the Congress' without being obliged to agree to the safeguards demanded by the Untouchables."

– Dr B.R. Ambedkar

What Congress and Gandhi Have Done to The Untouchables

(Thacker & Co., Bombay, 1946; pages 177-178)



THE HINDU ARCHIVES

SIR CHIMANLAL SETALVAD. Free India has punished him for refusing to pray at the shrine of the Congress.

BOTH paragraphs from this erudite and scathing work by one of India's most original and fearless thinkers deserve serious reflection. The first describes accurately the three stages in Britain's response to India's demand for independence. The second sums up the Congress' policy on the minorities' demand for a settlement on their demands for safeguards *before* independence.

As to the first paragraph, one must honestly answer which of the transitions in each of the three stages was more difficult than the rest and for which the liberals of old, rather than Gandhi, were responsible and deserve credit. The answer cannot be in doubt. The transition from the first stage, of flat denial based on brute force, to the second was the most difficult of all. It was reached in the British government's Declaration on August 20, 1917, that its policy was to promote "gradual development of self-governing institutions with a view to progressive realisation of responsible government in India as an integral part of British Empire". Hence the enactment of the Government of India Act, 1919. It provided for diarchy in government, with a limited role to Indians. The Congress did not work it. There came another Declaration, this time by the Viceroy Lord Irwin, on October 31, 1929, that "it is implicit in the Declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of dominion status", that is, independence.

At the round table conferences in London in the early 1930s, Indians failed to agree on safeguards for minorities and on a federation. The Government of India Act, 1935, established responsible government in the provinces, with Ministers answerable to and removable by elected provincial assemblies, but not at the Centre. The all-India federation it envisaged never came into being. The Congress formed Ministries in the provinces of Madras, Bombay, U.P. [United Provinces], Bihar, and Central Provinces. Inebriated with power,



THE HINDU ARCHIVES

M.C. SETALVAD, SON of Sir Chimanlal Setalvad. In 1971, he had no hesitation in supporting his father's opinion on alienating the Muslim League. "I still firmly hold that the Congress politics should have been so moulded in those days as not to alienate the Muslims...."

it rode roughshod over all others, as Sir Tej Bahadur Sapru bitterly complained from Allahabad to B. Shiva Rao in New Delhi. Congress Ministries resigned after the Second World War broke out. The Cripps proposals of 1942 were an effort at a settlement between the Congress and the Muslim League – a Union in which a province had the liberty to secede. It also recognised the right of a Dominion to secede from the Empire. India's independence had ceased to be an issue. It was only a matter of time. But an all-India federation had to be worked towards.

'CONGRESS HIGH COMMAND'

Reflect on the play of political forces at each of these stages. It was the dogged, persistent struggle of the liberals that led to the first and crucial transition in 1917, from denial to responsible government. Gandhi came on the political

scene after this and his policy was to support the war effort. Nor did he contribute to the working of the Act of 1919. He sponsored instead a programme of non-cooperation and civil disobedience. The Congress Ministries that were formed in 1937 did not play by the rules of the parliamentary system. *That* was when the concept of the "Congress High Command" came into being. It was to it, and only formally to the Assemblies, that the Ministers were accountable. Are you surprised that even in 2012 it is the High Command that decides (a) who shall be Chief Minister of a State (b) the strength of the Cabinet (c) the composition of the Cabinet (d) the resignation of Ministers and (e) the dissolution of Assemblies?

All other parties follow this pernicious and unconstitutional practice, especially the Bharatiya Janata Party, unless a powerful supremo in a State cocks a snook at it as B.S. Yeddyurappa does so efficiently. Read the correspondence between Gandhi and Nehru in 1937 on whether Purshottam Das Tandon should resign from the Congress on his election as Speaker of the U.P. Assembly. Both vehemently rejected the idea.

For different reasons both had contempt for the norms of parliamentary government. To Gandhi it was of British origin, not a swadeshi product suitable for Hind Swaraj. Nehru, the socialist, transferred his dislike of the liberals to the parliamentary system by which they swore. He swore at both. Their fans rewrote modern India's history, and state-supported institutions, academies, universities and the rest revel in the halo of the Gandhi-Nehru consensus. *There is a lot to be admired in a good many elements of that consensus. On this there can be no doubt.* They moulded an outlook on national unity.

The issue is that before 1947 neither Gandhi nor Nehru helped in forging a settlement on the minorities' rights and safeguards or in promoting parliamentary democracy. The studied rewriting of history, which denies the liberals their stupendous contribu-

tion in India's political evolution until the 1920s when the Gandhi-Nehru hegemony came to hold sway, is unworthy and demeaning. Stalinist rewriting of history denied Trotsky his fair share of credit for the Bolshevik Revolution in Russia in 1917. He was made a non-person. The attitude of some Indians is no better. The liberals are mentioned condescendingly. They were more clear-headed, realistic and practical than Gandhi or Nehru and not a whit inferior in political scruples to either.

They won the 1917 Declaration from the British. The Congress made no contribution to working the reforms, to setting sound precedents, and to achieving a settlement with other parties to confront the British with a united front. On their release from prison in 1945, the Congress leaders made it plain that they would negotiate only with the British, not with the Muslim League.

A VARIED LOT

The liberals, to be sure, were a varied lot. A Hindu Mahasabhaite like M.R. Jayakar passed off as a liberal. Tej Bahadur Sapru would show deference to "Mahatmaji" and sneeringly call him "Apostle" in private. Sapru was careful not to move too far away from Nehru. One man stood head and shoulders above this lot for his sterling integrity, sturdy independence and a keen sense of realism.

He was Sir Chimanlal H. Setalvad. Free India has punished him for refusing to pray at the shrine of the Congress.

Unfortunately, even his son Motilal Setalvad did him scant justice in his memoirs *My Life* (N.M. Tripathi; Bombay, 1970). He was strongly pro-Congress and was close to Vallabhbhai Patel. No Attorney-General of India has come anywhere near him in the qualities of independence and integrity he exemplified. His successor, C.K. Daphtary, a far better advocate, came a close second. Of the ones who followed him in the last four decades, the less said the better.

Fortunately, Motilal Setalvad rendered his father his just dues in an

interview to Hari Dev Sharma in the Oral History Project of the Nehru Memorial Museum & Library (NMML) in New Delhi, to which this writer is much indebted. It was recorded on January 30, 1971, shortly after the publication of his memoirs in 1970. As with his interviews with communist leaders, Sharma's immaturity and ineptness stand out.

Unlike his tolerant father, Sir Chimanlal, Motilal did not suffer fools gladly. Sharma was given his just deserts more than once during the interview. M.C. Setalvad resigned as Advocate-General of Bombay in 1942 once the Congress launched the Quit India campaign and there were massive arrests. Read this:

"Sharma: Then later on, on the request of the Governor, you continued till they made an alternative arrangement.

"Setalvad: Yes. I have said that in my book.

"Sharma: But why did you agree to that because it was a moral protest?

"Setalvad: Yes. Quite right, quite right. But at the same time, I was not like one of those domestic servants who could walk out as they wished. You have some responsibilities. It would have been puerile and childish to do anything else." Very apt terms for his interviewer.

Sharma's shortcomings did not deter M.C. Setalvad from speaking candidly on his father and on himself. He said, "The combination of a religious attitude with politics, such as was frequently to be found in what Mr Gandhi did, was clearly, according to him [Sir Chimanlal], inappropriate. He thought you could not mix religion with politics, and according to him, make a mess of both.

"Sharma: What was his attitude to Gandhi apart from his movements?

"Setalvad: Well, he was strongly of the view that but for the way in which some of the Congress leaders had dealt with matters we could have had a united India as a dominion with an independent status, part of the British Commonwealth.

"Sharma: Was he all through op-

posed to the Congress or was there any meeting ground?

"Setalvad: His idea was that the attitude of the Congress towards the Muslims and its demand for complete independence was not an attitude which would be beneficial to the country. That is the view which he took. With Muslims, he would have wished a more compromising attitude. In his view these compromises were prevented, for example at the Round Table Conference, by the views of Jayakar, Hindu Mahasabha, and so on. He frequently said, we were very near solution of the problem but this was prevented by the Hindu diehards. One seat more or one seat less, that was the sort of bargaining that was going on. They had lost the true perspective of the future of the whole country."

Sharma's repeated attempts to get M.C. Setalvad to toe the Congress line are best ignored. The liberals formed a small group, so Sharma blithely asked, "Did they think that their existence in politics was in a way useful either to the country or to society?"

"Setalvad: Notwithstanding their small number, almost microscopic, towards the later years, they thought that in many respects, the Congress was not going along the right lines and it was their duty to point out what the right lines were." That is what is missing in India's public life today. There is no room for independents of independent means, free from the domination of party bosses and the party funds they control.

Sharma's question on the Hunter Committee which inquired into the Jallianwala Bagh massacre exposed his ignorance of Chimanlal Setalvad's stellar role in shaping the minority report.

Sample this:

"Sharma: Were there any special reasons for his appointment on the Hunter Committee?

"Setalvad: Well, he had always commanded a great respect from most British administrators and they thought that he would not be amenable to, what the British then thought, the extreme Indian element. That was

Letters to the Editor

Letters of Sir Chimanlal H. Setalvad addressed to the Editor,
The Times of India, October 3 and November 3, 1947.

Many of those who are enthusing over the activities of the so-called 'Provisional Government' of Junagadh do not seem to realise the dangerous consequences that are likely to follow from what is happening. The Junagadh Government has acted unwisely in acceding to Pakistan, ignoring geographical considerations and the wishes of its subjects, but that affords no justification for what is being done.

The 'Provisional Government' was formed and functioned for some days in Bombay with the avowed object of overthrowing by force the established Government in Junagadh. The Government of Bombay was, I venture to say, bound not to allow the 'Provisional Government' to start its hostile activities against a State which is at peace with the Government of Bombay and with the Government of India, who are at peace with Pakistan to which Junagadh had acceded. Their permitting this to be done amounts to an unfriendly and hostile act against Junagadh and Pakistan.

The Government of India should not have allowed passage over its railways to a body proceeding to Rajkot with the proclaimed object of raising a volunteer army to overthrow the establishment of Junagadh.

The Government of Rajkot should not have given asylum to a body that was raising an army to overthrow the Junagadh Government.

It is most surprising that the Government of Rajkot should have tolerated the seizure by force of Junagadh State property within its territory.

Legally and constitutionally, the Governments of Bombay and India and those of the Kathiawar States are bound to stop and prohibit all activities within their territories of the 'Provisional Government'. The consequences of their inaction would be very serious.

– *The Times of India*, October 3, 1947.

The appeal made by you in your leader this morning for reason and common sense is very opportune. Recent unfortunate events have so frayed the nerves of those in the Governments of the two Dominions that indulgence in charges and counter-charges and attributing motives has become the order of the day and has widened the gulf between the two Dominions.

It is hoped for the welfare of the whole country that reason and common sense will take the place of the present temper on both sides. Pandit Nehru in his broadcast has rightly asked the Pakistan Government how and why the invaders of Kashmir came across the Frontier Province or West Punjab, and how they came to be fully armed. He charges the Pakistan Government with violation of international law and an unfriendly act towards India. He alleges that the Pakistan Government was either too weak to prevent the invaders of Kashmir from marching across its territory or that it was willing that this should happen.

Exactly the same poser can be put to the Indian Dominion with regard to Junagadh. The so-called 'Provisional Government' of Junagadh was openly formed in Bombay, and for days it proclaimed its intention of marching to Junagadh to overthrow the Junagadh Government as by law established. The leaders of that 'Provisional Government' have openly raised a volunteer army and have captured several villages in Junagadh territory. Junagadh House in Rajkot was forcibly seized by the 'Provisional Government', and Rajkot State, which has acceded to India, and the Indian Government themselves have remained passive spectators of all unfriendly and hostile acts against a State which is, together with the Dominion to which it has acceded, at peace with India.

Undoubtedly, Junagadh's action in acceding to Pakistan is unwise from all points of view and deserves condemnation, but that cannot justify the action that has been taken against it. The Indian Dominion may well be asked the self-same questions that Pandit Nehru has put to Pakistan. Was the Government of India too weak to prevent the armies of the 'Provisional Government' from invading Junagadh territory, or was it willing that this should happen.

– *The Times of India*, November 3, 1947.

by reason of his liberal views or his views as a liberal politician.

“Sharma: Could you tell what part did he play in the Hunter Committee? Of course, he himself has set out in his book that they were not on speaking terms, rather he exchanged hot words with the Chairman.

“Setalvad: Well, whenever in later years, I went for my own purposes to the Punjab, there was hardly any person whom I met who did not remember his cross-examination of witnesses on the Hunter Committee. They always spoke so highly of the way in which he had pinned down those witnesses, including the General himself.”

Motilal admitted that his own “politics were more tinged in those days by the Congress view and I was not a believer in the liberal view at all”. In 1971 he had no hesitation in supporting his father’s opinion: “I still firmly hold that the Congress politics should have been so moulded in those days as not to alienate the Muslims, and we could have if we had acted wisely with the Muslims, prevented a truncated India and all the evils which have for 20 years or more flowed from the partition. We could have avoided it.”

Sharma sought Motilal’s opinion on whether the partition of India could have been prevented and received a frank reply. “Yes. My own view is it could have been prevented. One thing is very clear to me: when the many Congress Ministries came into power after the first elections (in 1937) — under the provincial scheme, and the Congress held the Ministries in various provinces, the Congress could, at that stage, have made arrangements with the Muslim League to take in the Muslim League as a co-partner. The League was willing. But, if I remember right, the Congress insisted — they took Muslims as Ministers — but they insisted on those Muslims becoming Congressmen, and would not have Muslim League Ministers. The whole idea was the refusal to recognise the Muslim League, which was based on the theory that the Congress represented everybody, which, in fact, it did not at that time.”



“THE LIBERALS WERE a varied lot. A Hindu Mahasabite like M.R. Jayakar (left) passed off as a liberal. Tej Bahadur Sapru (right) would show deference to ‘Mahatmaji’ and sneeringly call him ‘Apostle’ in private. Sapru was careful not to move too far away from Nehru.”

Sharma also sought his views on “Gandhi’s movements” and was told, “I always thought and I still think that Gandhi was more a politician than a saint or a religious reformer or a philosopher. The base of all his activities was politics, though, of course, he was a great man and had great moral qualities also and he made use of all those qualities primarily for his political purposes. That is what I feel about him.” This made the poor interviewer very uneasy.

‘ON GANDHI’S MOVEMENTS’

“Sharma: Now, it is a very bold statement to make, because Gandhi himself said that primarily he was a man of religion. Now, would you elucidate this contention?”

“Setalvad: It all depends on how you feel about it. I may be quite wrong, and he is probably right because he knows more about himself than I know about him! This is what I read and what I heard about it — and the feeling, the impression one got was that the mainsprings of his actions were political — the advancement, the independence, the liberation of his country.

“Sharma: Oh, in that sense.

“Setalvad: In that sense. And, of course, even I would go this length, in his way of life, the way in which he became one of the masses was initially

deliberately assumed for the purpose of making himself a person trusted by them so that he could lead them; they would follow him easier; he would become one of them and live with them, and so forth and so on.”

On two points — his father’s abilities as a lawyer and Nehru’s respect for the Attorney-General — Setalvad’s statements are interesting. “I think he was one of the ablest lawyers that we had on the Bombay (Original) side. I should say even considering all India, one of the ablest lawyers. It all came, I think, from a very very clear mind and a quick grasp. I don’t claim myself to have the same quick grasp that my father had. The tradition about him was that you could talk to him as he was going up the lift for a few minutes, and then he could present the matter straightaway effectively to the court.” He was superior to most as a lawyer as well as an advocate.

Nehru “laid down very sound principles — for example, one of the principles laid down was that whenever a question arose as to a legal matter, the Attorney-General’s opinion, whether it agreed or disagreed with that of the Minister, was to be considered as final and that should be accepted always by the government”.

Father and son had many things in common. Both were independent and clear-headed, Chimanlal being the more realistic of the two. Neither thought highly of Gandhi, and both were bad writers. Chimanlal’s *Recollections and Reflections* are a must read, but they are terribly dull.

M.C. Setalvad’s book *War and Civil Liberties* (Oxford University Press, 1946) is a collector’s prize. It deserves to be reprinted with an update by a true scholar. This slim volume records rulings by the Federal Court in support of Indian citizens. A creation of the British, its record during a near-violent revolt against British rule is *vastly* superior to that of the Supreme Court of free India on matters like the Terrorist and Disruptive Activities (Prevention) Act (TADA), the Prevention of Terrorism Act (POTA), and the Armed Forces Special Powers Act.

Barring the first appointees, none of the judges since can hold a candle to Sir Maurice Gwyer, Chief Justice of the Federal Court, for erudition or independence.

BHULABHAI DESAI

Most neglected is his biography of his senior at the Bar, Bhulabhai Desai, in the Builders of Modern India series of the Publications Division (1968). The neglect is understandable. It exposes Gandhi's disgraceful treatment of Bhulabhai. He was ruined once the Congress pack hounded him for the pact he initialled with Liaquat Ali Khan on January 11, 1945. Setalvad exposes the utter falsity of the charge that it was done behind Gandhi's back. Appendix 1 at page 361 is a "Photostat of an explanatory note by Bhulabhai Desai *with Gandhiji's Alterations*". He proves fully that "Bhulabhai acted with the consent and approval of Gandhi" (page 279). Indeed "Public statements by Gandhi... completely exonerated Bhulabhai".

But Gandhi did nothing to protect the victim of the party's wrath. On the contrary, he collaborated actively with Patel & co. in denying Bhulabhai the Congress ticket for the Central Assembly, where he had led the party with distinction. Their action "had Gandhi's complete support". He called on the man he had done ill when he lay on his deathbed, studiously on a day on which he was observing silence, to Bhulabhai's utter despair. H.M. Seervai's comment is apt: "It is astonishing that Gandhi's gospel of universal love did not extend to giving solace and comfort to a dying friend, on whom Gandhi had inflicted a mortal injury" (*Partition of India*; page 212).

Maulana Azad alone did Bhulabhai justice. Bhulabhai went on to win national acclaim as defence counsel in the INA trials. But India has yet to do justice to Chimanlal Setalvad for his brilliant cross-examination of British officials who appeared before the Hunter Commission (*Punjab Disturbances 1919-20*; Deep Publications, 1976; Volumes I and II contain the texts of the two reports. The Minority



THE HINDU ARCHIVES

DR B.R. AMBEDKAR. The erudite lecture he delivered at the Gokhale Memorial Hall in Poona on January 18, 1943, was a scathing censure of the sterile politics of Gandhi and Jinnah in contrast to Mahadev Govind Ranade's liberal and constructive approach to politics.

Report reproduces extracts from the cross-examination).

There is reason for this neglect. To his dying day, December 30, 1947, Chimanlal Setalvad held his head high and spoke the truth to power. His letters to *The Times of India* which this writer avidly read as a schoolboy deserve to be published in a collection. In an article entitled "India Divided", he squarely blamed the Congress for sabotaging the Cabinet Mission's Plan, the last chance for preserving India's unity. But he also accurately predicted that Jinnah's "personal triumph", the establishment of Pakistan, sowed the seeds of "suffering to generations yet unborn" (*The Times of India*; June 15, 1947).

But it is the two letters he wrote on Junagadh and Kashmir which place

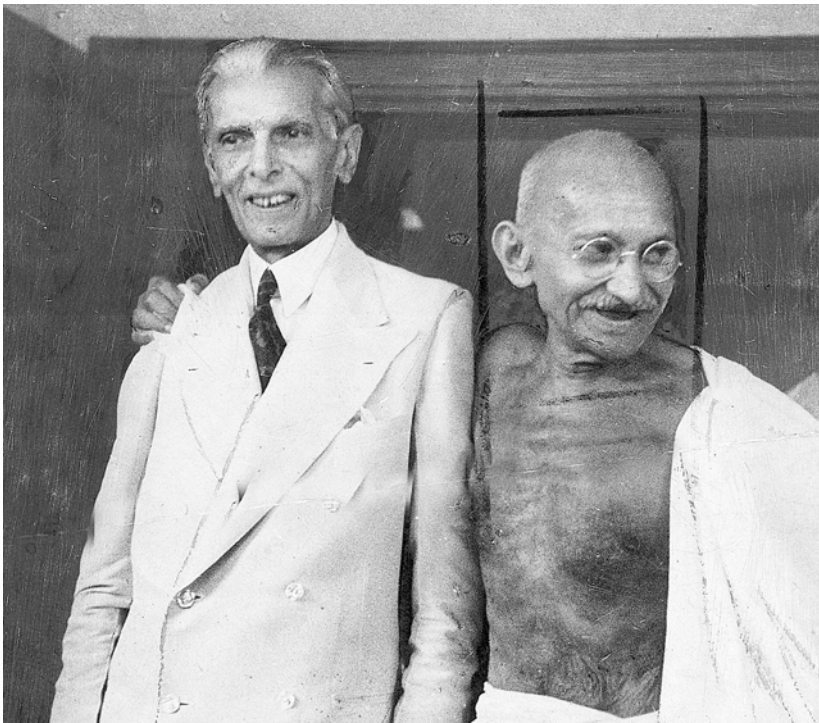
him higher than men like Sapru or Kunzru. He faulted India for conniving and assisting in the march to Junagadh *before* the tribal raid from Pakistan into Kashmir and pointed out that morally and politically that march was on a par with the tribal raid (see box).

AMBEDKAR'S VIEW

In these powerful dissents, Sir Chimanlal was only being true to the great liberal heritage. No one described it better than Dr B.R. Ambedkar did in an erudite lecture he delivered at the Gokhale Memorial Hall in Poona (now Pune) on January 18, 1943. Its theme was "Ranade, Gandhi and Jinnah". It was a scathing censure of the sterile politics of Gandhi and Jinnah in contrast to Ranade's liberal and constructive approach to politics. I make no apology for quoting it *in extenso*:

"[Mahadev Govind] Ranade was a great politician of his day. He must therefore be compared with the greatest of today. We have on the horizon of India two great men, so big that they could be identified without being named – Gandhi and Jinnah. What sort of a history they will make may be a matter for posterity to tell. For us it is enough that they do indisputably make headlines for the press. They hold leading strings. One leads the Hindus, the other leads the Muslims. They are the idols and heroes of the hour. I propose to compare them with Ranade. How do they compare with Ranade?...

"The first thing that strikes me is that it would be difficult to find two persons who would rival them for their colossal egotism, to whom personal ascendancy is everything and the cause of the country a mere counter on the table. They have made Indian politics a matter of personal feud. Consequences have no terror for them; indeed they do not occur to them until they happen. When they do happen they either forget the cause, or if they remember it, they overlook it with a complacency which saves them from any remorse. They choose to stand on a pedestal of splendid isolation. They wall them-



THE HINDU ARCHIVES

AMBEDKAR SAID: “WE have on the horizon of India two great men, so big that they could be identified without being named – Gandhi and Jinnah. ... Politics in the hands of these two great men have become a competition in extravaganza. If Mr Gandhi is known as Mahatma, Mr Jinnah must be known as Qaid-i-Azam.”

selves off from their equals. They prefer to open themselves to their inferiors. They are very unhappy at and impatient of criticism, but are very happy to be fawned upon by flunkeys. Both have developed a wonderful stage-craft and arrange things in such a way that they are always in the lime-light wherever they go. Each of course claims to be supreme. If supremacy was their only claim, it would be a small wonder. In addition to supremacy each claims infallibility for himself....

“This feeling of supremacy and infallibility is strengthened by the press. One cannot help saying that. The language used by Gardiner to describe the Northcliffe brand of journalism, in my opinion, quite appropriately describes the present state of journalism in India. Journalism in India was once a profession. It has now become a trade. It has no more moral function than the manufacture of soap. It does not re-

gard itself as the responsible adviser of the public. To give the news uncoloured by any motive, to present a certain view of public policy which it believes to be for the good of the community, to correct and chastise without fear all those no matter how high, who have chosen a wrong or a barren path, is not regarded by journalism in India as its first foremost duty. To accept a hero and worship him has become its principal duty. Under it news gives place to sensation, reasoned opinion to unreasoning passion, appeal to the minds of responsible people to appeal to the emotions of the irresponsible. Lord Salisbury spoke of the Northcliffe journalism as written by office-boys for office-boys. Indian journalism is all that plus something more. It is written by drum-boys to glorify their heroes. Never has the interest of the country been sacrificed so senselessly for the propagation of hero worship. Never has hero worship be-

come so blind as we see it in India today. There are, I am glad to say, honourable exceptions. But they are too few and their voice is never heard.”

One wonders what he would have said of our TV anchors.

Ambedkar added: “Entrenched behind the plaudits of the press, the spirit of domination exhibited by these two great men has transgressed all limits. By their domination they have demoralised politics. By their domination they have made half their followers fools and the other half hypocrites. In establishing their supremacy they have taken the aid of ‘big business’ and money magnates. For the first time in our country, money is taking the field as an organised power.... Politics has become a kind of sewage system intolerably unsavoury and insanitary. To become a politician is like going to work in the drain.

“Politics in the hands of these two great men have become a competition in extravaganza. If Mr Gandhi is known as Mahatma, Mr Jinnah must be known as Qaid-i-Azam. If Gandhi has the Congress, Mr Jinnah must have the Muslim League. If the Congress has a working committee and the All-India Congress Committee, the Muslim League must have its working committee and its council. The session of the Congress must be followed by a session of the League. If the Congress issues a statement, the League must also follow suit. If the Congress passes a resolution of 17,000 words, the Muslims League’s resolution must exceed it by at least a thousand words. If the Congress president has a press conference, the Muslim League president must have his. If the Congress must address an appeal to the United Nations, the Muslim League must not allow itself to be outbidden. When is all this to end? When is there to be a *settlement*? There are no near prospects. They will not meet, except on preposterous conditions. Jinnah insists that Gandhi should admit that he is a Hindu. Gandhi insists that Jinnah should admit that he is one of the leaders of the Muslims. Never has there been such a deplorable state of bank-

ruptcy of statesmanship as one sees in these two leaders of India.” This indictment was followed by a comparison with Ranade.

“How does Ranade strike as compared to these two?... He had not a tinge of egotism in him. His intellectual attainments could have justified any amount of pride, nay even insolence. But he was the most modest of men. Serious youths were captivated by his learning and geniality. Many, feeling completely under his sway, responded to his ennobling influence and moulded their whole lives with the passionate reverence for their adored master. He refused to be satisfied with the praises of fools, and was never afraid of moving in the company of equals and of the give and take it involves. He never claimed to be a mystic relying on the inner voice. He was a rationalist prepared to have his views tested in the light of reasons and experience. His greatness was natural. He needed no aid of the stage nor the technique of an assumed eccentricity nor the means of a subsidised press. As I said, Ranade was principally a social reformer. He was not a politician in the sense of one who trades in politics. But he has played an important part in the political advancement of India. To some of the politicians he acted as the teacher who secured such signal successes and who dazzled their critics by their brilliance. To some he acted as the guide, but to all he acted as the philosopher.”

Here follow words which are extremely relevant and helpful in our present political situation: “What was the political philosophy of Ranade? It may be summed up in three propositions. (1) We must not set up as our ideal something which is purely imaginary. An ideal must be such that it must carry the assurance that it is a practicable one. (2) In politics, sentiment and temperament of the people are more important than intellect and theory. This is particularly so in the matter of framing a constitution. A constitution is as much a matter of taste as clothes are. Both must fit; both must please. (3) In political negotia-

tions the rule must be what is possible. That does not mean that we should be content with what is offered. No, it means that you must not refuse what is offered when you know that your sanctions are inadequate to compel your opponent to concede more.

“These are the three main doctrines of Ranade’s political philosophy. ... There can be no compromise on principle, and there should not be. But once the principle is agreed upon, there can be no objection to realise it by instalments. Graduation in politics is inevitable, and when the principle is accepted it is not harmful and indeed it may in certain circumstances be quite advantageous. On this third proposition there was really no difference between him and Tilak, except this; Tilak would have the possible maximised by the application of sanctions; Ranade would look askance at sanctions. This is all. On the rest they were agreed.” Had Tilak lived Gandhi would not have gone as far as he did.

“He [Ranade] was not a politician in the sense of one who trades in politics.”
– Ambedkar

The quarter century of Gandhi’s politics exacted a heavy toll. He was truly one of the greats. He raised Indians’ pride and self-respect. His programme bred lawlessness. His policies on crucial issues affecting India’s unity were destructive. Nehru has the nation in his debt. The ideas and ideology he espoused are relevant – secularism, non-alignment, democracy and much else. Some of his policies wreaked havoc, alas. Neither of the two knew compromise.

The truth was told by a brilliant but

lapsed liberal Sir C.P. Ramaswamy Aiyar. He was once mentor of the Home Rule League and a follower of Annie Besant whom he ably defended in court. He became a careerist and found transient glory as Dewan of Travancore. He was hated for his autocratic and repressive ways. That is no reason why a profound truth which he told members of the British Cabinet Mission on April 9, 1946, should be ignored. The minutes read: “He [Sir C.P.] personally regarded the three great contributions made by the British to India to be the judicial system, the idea of the unity of India which had been so long a dream and had been made effective by the British, and which he felt to be so very precious and worth safeguarding at all costs. *The third contribution was the spirit of compromise which was not being manifested as much as he would like at this time.*”

As he spoke, the unity of the country was under threat. The Cabinet Mission’s plan of May 16, 1946, was the last opportunity to preserve it. Gandhi mounted his attack on it the very next day and went on to propound his disingenuous – if not worse – doctrine of acceptance subject to *his* interpretation. The Plan collapsed. India was partitioned on August 15, 1947. The judiciary today is in a far worse state than it was in 1946. And “the spirit of compromise scorned by the Congress as soon as it tasted some power in 1937, is gone. Sordid deals for power-sharing reflect sordid compromises. It is the genuine give and take of democratic politics which reflects “the spirit of compromise”. But, to quote Ambedkar again, democratic governance can work only in a democratic society. For all our successes, such as they are, we have still a long way to go. Our success will be ensured if we hearken to the lessons which the great and *erudite* liberals such as Dadabhoy Naoroji and Gopal Krishna Gokhale taught us. They were men of learning given to reflection and committed to democratic politics. They did not impose their “inner voice” on blind servile followers. □

A punk writer

Alexander Cockburn (1941-2012) was a powerful critic of the madness of the Republicans and the neoliberalism of the Democrats. BY VIJAY PRASHAD



SHASHI ASHWAL

He left England in 1972 to escape “the relics of an empire corrupted far beyond the reach of popular indignation”. **Washington and its hypocrisies** provided sufficient material for his acidic pen.

THE whole thing is a blur to me. It was sometime in 1985 or 1986, a warm night, when a band member from either Black Flag or the Circle Jerks told me about Alexander Cockburn. We were standing in one of the side alleys near Los Angeles’ Roxy Theatre, smoking, when he told me about Cockburn’s fulminations against Ronald Reagan and contemporary America. Reagan’s jarringly brutal wars were a preoccupation for me. My political friends and I took our lessons from the cyclostyled sheets produced by the Committee in Solidarity with the People of El Salvador (CISPES) and the various solidarity committees for divestment from apartheid South Africa. Their content was of the essence, but the papers were dreary to read.

Events seemed to drain the ink of human vitality: massacres of Salvadorian peasant farmers and police firing at black workers did not require embellishment, only the dry tones of an activist’s pen. Finding Cockburn was a treat. He was no less moved by the outrages of our time, and he seemed to be reading the same activist broadsheets as I did. But his stylistic translation into his columns of those events and the rage that should greet them for *The Village Voice* and *The Wall Street Journal*, for *The New York Review of Books* and *Vanity Fair* took my breath away. As my musician friend told me, this guy was a punk writer.

Already known as a superb left-wing stylist in England, Alexander came to the United States in June 1972 to escape what he called “the relics of an empire corrupted far beyond the reach of popular indignation”. He arrived in the U.S. at the time when President Nixon’s burglars broke into the Watergate hotel, and when the bombardment of South-East Asia had discomfited U.S. allies, who had begun to leave its side (the Thai army left in January and New Zealand’s forces left in December).

Washington and its hypocrisies provided sufficient material for his acidic pen. Alexander took up residence at *The Village Voice*, the counter-cultural journal of New York City, where he hosted the “Press Clips” column and (with James Ridgeway) wrote “The Moving Target” reports. As the American media gasped for breath between the claustrophobia of its ulcerative political landscape and of its corporate-induced “balanced” journalism, *The Village Voice* became a life raft. Old-school municipal journalism came from Wayne Barnett, vibrant essays on imperialism, socialism and gay rights came from the witty pen of Andrew Kopkind, amusing music journalism and bold essays on abortion rights and feminism came from Ellen Willis, and sharp and witty film reviews came from J. Hoberman. This was good company.

At *The Village Voice*, and in his forays into *Esquire*, *Harper’s* and *The New York Review of Books*, Alexander fired volley after volley against the mendacity and mediocrity of the corporate media and against the powers that be. Old traditions of American journalism that fearlessly derided the powerful had declined by the 1970s. Muckrakers such as Ida Tarbells and Nellie Bly, Jacob Riis and Ida B. Wells no longer found mainstream homes. Razor-edged columnists such as H.L. Mencken and I.F. Stone had not been reproduced. Alexander perched in this gap.

The broad contours of Alexander’s political view had been formed within a decade of his residence in the U.S. His columns in *The Village Voice* and in, of all improbable places, *The Wall Street Journal* provided the weekly diagnosis of the emergence of Reaganism. In 1987, Alexander’s inquest yielded the following summary: “Reaganism is shorthand for a particular culture of consumption, a reverie of militarism, of violence redeemed, of a manic, corrupted



ALEXANDER COCKBURN SPEAKING on "War on Iraq, War in America" at the Asian College of Journalism in Chennai in 2005.

and malevolent idealism. The priorities of this culture at the directly political level have been simple enough: the transfer of income from poor to rich, the expansion of war production and an 'activist' foreign policy, traditional in many ways but as Noam Chomsky has said, 'at an extreme end of the spectrum: intervention, subversion, aggression, international terrorism and general gangsterism and lawlessness, the essential content of the 'Reagan doctrine'."

Reaganism would become the general doctrine of the Republican Party, and it would draw the Democrats into

engagement and then mimicry. What was the antidote to this national malaise? In 1976, Alexander and James Ridgeway followed Jimmy Carter and Reagan through the corn of Iowa and the thickets of New Hampshire. Carter would win that election, but there were already indications of how the Democrats would falter before the rise of Reaganism, and then lurch to the Right under Bill Clinton. "It is absurd that a Democratic candidate is not triumphantly conquering all before him with a powerful reforming message," Alexander wrote. "But 1976 does not seem to be 1932, and currently no such

Democrat is in view." This prognosis holds to this day: the Republicans have withdrawn into the furthest corner of the Right, and the Democrats are eager to edge as close to them as possible while mouthing earnest liberal sentiments.

While at *The Village Voice*, Alexander got into his share of scuffles. It was hard to stay at his desk when his own paper began to slip into the arms of Reaganism. In 1977, Rupert Murdoch bought the parent company of *The Village Voice*, whose new management threatened to get rid of Marianne Partridge, the much loved, smart editor of

the magazine (now publisher of the *Santa Barbara Independent*). The sports writer Jack Newfield asked Alexander if he had Murdoch's home number, which he did, and so Alexander fixed a meeting for the three of them to discuss the changes at *The Village Voice*.

Murdoch, who was not comfortable with a woman at the helm of his publication, welcomed the men into his apartment, "Relax, fellows. We're back to square one. Marianne will remain the editor. Have a drink, please." Murdoch then told them stories about his own time at Oxford, when he was Red Rupert. Not long after this, the publisher fired Marianne Partridge anyway, but her staff fought back. They walked Marianne Partridge and her dog to work each day. Alexander did not let the old Oxford tie or the steak and red wine cloud his vision. He would later call Murdoch a "world class monster" and write bitingly that Murdoch dispensing with his newspapers would be like "Dracula selling his coffins."

In 1973, the black ink of censorship covered over Alexander's first essay on Palestinians. *The New York Times* briefly reported that Palestinian guerrillas fired on an Israeli army post and so "Israeli planes flew north and dumped high explosives on a refugee camp in Lebanon, killing a dozen or so men, women and children". Alexander wrote this up for his "Press Clips" column and wondered about the "lack of moral disquiet in the *Times*' story about the lethal retaliation inflicted on innocent refugees". Dan Wolf, *The Village Voice*'s editor, called Alexander, asked him to reconsider, and then simply dropped the story. This got under the skin of Alexander, who would then throw his entire arsenal of sarcasm and wit at the blockade around the Truth when it came to the Middle East (West Asia), and mainly Israel.

On November 19, 1980, Alexander published an extended interview with the Israeli dissident Israel Shahak, who laid out the basic parameters of Israeli colonialism, and whose translations from the Hebrew press over the

course of the next decade revealed the dynamics: roads and walls to cut off Palestinians from each other, settlements and military posts to link the occupied territories to Israel proper, and a thirst for the water that lay under the Palestinian aquifer. Alexander wrote about all this, and it got to be too much for his employers. What galled the Israel lobby was Alexander's column from August 10, 1982, where he wrote in the context of the invasion of Lebanon, "The Israelis are behaving like war criminals."

He forsook fame and fortune for his magazine *Counterpunch*.

In 1984, *The Village Voice* editor David Schneiderman found the reason to remove Alexander (Schneiderman, who was Murdoch's man, would later recall Murdoch marvelling "how a bunch of Communists could manage a paper so well"). The Institute for Arab Studies had in 1982 given Alexander \$10,000 to fund a trip to Lebanon so that he could write a book on the Israeli invasion. He had not disclosed this to his editor. The muck flew that the Institute and Alexander were anti-Semites. It was rubbish. Still, Alexander was suspended from *The Village Voice*. It would not be the last time that Alexander would be accused of anti-Semitism. As he put it, "Anti-Semitism has become like a flit gun to squirt at every inconvenient fly on the window pane."

Victor Navasky of *The Nation* (founded in 1865) poached Alexander on the advice of Andrew Kopkind. Alexander began to write Navasky a column, which he wrote until his death: it was the longest-running column in the history of this venerable magazine. If you read Alexander's essays, you know that an immense influ-

ence on him was his father, the former Communist, journalist and newsman Claude Cockburn. It was his father's novel *Beat the Devil* (made into a film by John Huston in 1953) that provided Alexander with the name of his column. At *The Nation*, Alexander went after the same old scoundrels. The columns from *The Village Voice*, *The Wall Street Journal* and from *The Nation* sit on my shelf in his great collections: *Corruptions of Empire* (1987), *The Golden Age Is In Us* (1995), *Washington Babylon* (1995), and one that I anticipate, *Colossal Wreck* (2012).

In 1994, with the U.S. convulsed by the madness of the Republicans and the neoliberalism of the Democrats, Alexander joined with Ken Silverstein and later Jeffrey St. Clair to produce an alternative, *Counterpunch*. I remember taking out a subscription to the hard-copy newsletter (before the website was produced) and enjoying the honest journalism. It tells you something about the integrity of Alexander that he forsook fame and fortune for the small magazine, preferring to keep to his opinions and build his audience than to align himself to the advantages of corporate power.

Within 10 years, *Counterpunch*'s website would receive three million daily hits, with 100,000 unique visitors and 300,000 page views. The website scintillated after 9/11, when *Counterpunch* was one of the few U.S.-based harbours for critical thinking around the War on Terror, the war on Afghanistan, the growth of domestic surveillance, and the emergence of a new kind of political arithmetic that favoured free markets and unfree citizens. Alexander found writers from across the political spectrum who were willing to stand sentinel against the madness.

For two years Alexander battled his cancer privately, letting only his daughter, Daisy, and a few friends know of what had begun to overrun his body. His suffering remained private, but his own thoughts continued to appear in *Counterpunch* until his last week. He missed only one column during his last month. □

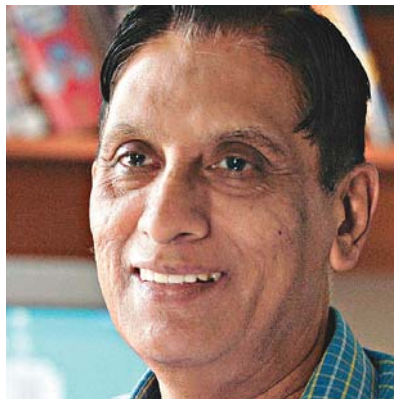
Policing challenges

It is a matter of distress that there is no sign that those ruling the roost in India are willing to give up the reins of control over a much-abused police force.

LET me begin with an honest confession. In spite of my nearly four decades in the Indian police force, ironically, I am its bitterest critic. I am at the same time one of its staunchest admirers. To a superficial reader there may seem an inherent contradiction here, though I myself do not see one. The obstacles to honest, professional and efficient policing in the Indian context are enormous. These impediments are mounting at an alarming pace in a highly politicised ambience where narrow party interests supersede the needs for community safety. Not many are able to comprehend this complicated situation. And this explains some of the uncharitable and ill-founded criticism of the police. The few who understand the intricacies involved are not willing to admit that the Indian police are performing reasonably well considering the great odds they are pitted against in the form of too many extraneous controls and influences.

The average consumer of police service in the country demands literally the moon from the policeman. The expectation: maintain peace with minimum force even when provoked. The best of police forces in the world cannot achieve this. Just as there cannot be a vegetarian tiger, there cannot be a police force which will not use force when the occasion demands it. I am inclined to believe that within the constraints imposed by a corrupt polity and a massive population – a substantial chunk of which is semi-literate if not illiterate – the police have given a fair account of themselves and have held the country together.

I am for punishing those in the



Law and Order

R.K. RAGHAVAN

force who misbehave even slightly, what to speak of those who err grievously. Those policemen who rob or rape deserve the capital sentence, if only to deter others in the force who hide such evil proclivity. At the same time, my appeal is for a reward to those policemen – especially at the grass roots – who give their best and have the guts to halt influential depredators, be they those who plunder our mines or those who steal sand, both resources that belong to the state.

What I have always pleaded for is an understanding of the complexities of the tasks assigned to the Indian police. Some recent happenings convince me that the challenges to effective and professional policing can strike at the system itself. At this rate policing will collapse, especially in the four metros, which have become a hotbed of political intrigue.

Take a few recent instances in the metros, where the police have had to

fulfil a nearly impossible role because of the increased might of the mob and anti-social elements, backed either by the establishment or by those opposed to it. The former uses the police to remain in power, while the latter want the police to fail so that they can use the resulting chaos to damn the government. The police are caught between these two misdirected segments of the polity.

As I write this, Baba Ramdev and thousands of his followers are just about to vacate the Ambedkar Stadium in Delhi after ignoring the police request to clear the area. The Baba's threat to march on Parliament House on the black money issue was foiled by the police in an admirable manner. Later, the agitators were holed up in the stadium and refused to budge. In a situation where a mob had taken the law into its hands, the police showed the utmost sagacity and patience.

Months ago, the Delhi police had been criticised for clearing the Ramlila Grounds of agitators from the same group when there was a semblance of a threat to law and order. The point made then was that the police acted needlessly against a peaceful crowd. This argument ignored the potential the situation held for a showdown between the crowd and the authorities the next morning. I am not discussing here the merits of the cause for which the Baba stands. I am wholly focussed on the predicament he and his followers posed to the police, who would be accountable ultimately for any violence that flows from a kid-glove treatment of unruly crowds.

Moving to Mumbai, on August 11 a democratic protest against the recent ethnic violence in Assam was disrupt-



WVEK BENDRE

A RIOTING MOB attacks policemen outside Azad Maidan in Mumbai after a rally to protest against the recent riots in Assam turned violent on August 11.

ed and large-scale violence unleashed. As a result, at least two lives were lost and several people, including many policemen, were injured. The violence was unexpected, although some reports suggested that the police had intelligence pointing to the contrary. The Mumbai Police Commissioner denied any intelligence failure.

The organisers of the meeting contended that their peaceful assembly had been infiltrated by anti-social elements. (According to one report, a mob armed with sticks, rods and swords had travelled from Kurla station and descended on Azad Maidan.) The truth will never emerge. The point is, how do the police cope with a situation where they allow a democratic protest but it is frustrated either by a mischievous organiser or by elements opposed to it.

What if the police use force uniformly without fear or favour to maintain law and order? Will it be supported by the government of the day? The Maharashtra Chief Minister is said to have gone to the capital to brief the Prime Minister personally on this issue. The very fact that he did so would indicate that there were certain aspects to the August 11 violence which could not be brought into the public domain. There is here a suspicion that the elements who were not reconciled to a squeaky-clean Chief Minister were behind the violence. Whatever be the case, policing a huge metropolis like Mumbai cannot be on professional

lines any longer but will have to be tailored to the needs of politics.

All this takes place in the midst of huge doubts raised about the integrity of the process that determines the posting of police officers in the city. Hats off to Julio Ribeiro, former Police Commissioner, who has cited irregularities and made specific allegations. This confirms that there is not only politics in policing but also large-scale corruption in administering police forces. This is an evil many other cities in the country also suffer from. The rat race is for a posting in a city because of the huge scope for lining one's pockets. The ultimate casualty is professional policing because postings are ordered not on grounds of suitability but on the price paid by the seeker of a 'lucrative' position.

Moving south, there is now an outstanding Police Commissioner in Chennai, who has brought in many innovations. He deserves to succeed. Under his leadership, the city police recently denied permission for the holding of a Tamil Elam Supporters Organisation (TESO) conference at the Royapettah YMCA grounds. I thought that this was a sensible move because the emotions involved were explosive, although the police refusal cited other reasons, including the proximity of the venue to a government hospital. The Madras High Court, however, ruled that such an order was irregular and permitted the organisers to go ahead with the meet at

the same place. Of course, in the process, it imposed a few conditions on the organisers, including the responsibility to maintain order.

I thought the stands taken by the police and the judiciary were equally justifiable: the former opted for a precautionary move in the interests of calm near a hospital where hundreds of sick were being treated, and the court took a stand that upheld the constitutional right to freedom of speech of an organisation that had not been banned by the government. Fortunately, the two decisions were accepted with great grace by the rival groups.

Hypothetically speaking, what if the High Court had endorsed the police order and the organisers chose to defy the ban? There would have been bedlam and violence. This is the dilemma that police all over the world face. Unless political parties display moderation and grace, the police, sandwiched between them, could flounder. It is not my case that such dilemmas are the problems of the Indian police alone. The difference between us and many Western democracies is that politics and policing are zones apart in most of the West. It is a matter of distress that there is hardly any sign that those ruling the roost in India are willing to give up the reins of control over a much-abused police. As long as this remains so, the citizen cannot expect honest and objective policing. This is the tragedy of Indian democracy. □

Vicious backlash

In Bihar's Forbesganj, social activists fighting a community's custom of pushing girls into prostitution are intimidated. BY MALINI BHATTACHARYA

The settlements of the Nutt community close to the borders of **Nepal, Sikkim and north Bengal** are not just source areas but also transit and destination points for trafficking in women.

ON the night of February 12, a raid was conducted by the police in a well-known brothel area of Uttari Rampur, Ward No.3, Forbesganj, in Araria district in Bihar. It was led by the Superintendent of Police, Shivdeep Lande, himself. In all, 25 girls were rescued and a number of alleged traffickers were caught. About three months later, I was surprised and shocked to find the name of Mohammed Kalam of Forbesganj mentioned as the person who had been arrested following the testimony given by one of the rescued girls.

Was this the same Md. Kalam I had met in January 2007 on my visit to Uttari Rampur as a Member of the National Commission for Women (NCW)? The Kalam I had known was a member of the marginalised Nutt community, which had been providing women for the brothels of Rampur for generations. Kalam had been raised by his two elder sisters, who had themselves been inducted into the trade at an early age but had vowed to make sure that their brother never became part of the vicious network of traffickers and pimps of Forbesganj. They had sent him away to be educated in a school. He had taken advantage of this opportunity and become the first graduate from the Nutt community in the area. He acquired a degree in law and came back to his birthplace as a social activist fighting against the exploitation of women.

When I visited Rampur, Kalam was one of the three teachers at the informal and unsupported primary school that was being run by Apne Aap Women Worldwide, a non-governmental organisation, in the area. There were 70-80 children attending the school regularly, and I was informed by Kalam and

his colleagues that after a long struggle it had become possible to get two of the girls admitted to class V of a reputed school in the locality. They were running a Mahila Mandal for the women of the locality and trying to prevent trafficking. Quresha Khatun, Kalam's elder sister, played a big role in the Mahila Mandal.

My interaction with the people carrying out this uneven struggle with so much courage and determination did not end there. About a month later, I intervened with the district and State administration in a case where Apne Aap was trying to rescue a minor girl, the daughter of one of the members of the Mahila Mandal, from being trafficked by her adoptive father in Katihar. Kalam had led the team to the place where the girl was confined and thus made her rescue possible. For his efforts, he was stabbed by some miscreants obviously associated with the traffickers. Subsequently, Kalam received recognition for his anti-trafficking work from various national and international organisations and was named in a weekly magazine as the anti-trafficking hero of 2008. He was also a resource person for the United Nations Office on Drugs and Crime's (UNODC) anti-trafficking training programme for the Bihar police. So, I could hardly believe that the same Kalam could have been arrested for being involved in trafficking.

However, a few days later, I got a call from Tinku Khanna, who had been working with the Apne Aap programme in Forbesganj almost from its inception. She told me: "Yes, this is the same Kalam you had met." Tinku reminded me that when I had gone to Forbesganj, an annual fair called Kali Mela was going on there and together with Tinku and her colleagues, I had walked incognito to the fair at sundown. I had been struck, I remembered, by the exclusively masculine atmosphere at the mela and the complete absence of women, children or families such as we find in rural fairs. I had written in my report about several tents openly advertising pornographic films. There was a Nautanki tent and I was informed that instead of folk drama performance, the tent was used for dancing sessions by young girls who were then inducted into prostitution. Even while we were walking down the streets, we could see



MOHAMMED KALAM, WHO had been honoured for his work to check the trafficking in women, at a police training session. The police mysteriously arrested him for the same offence.



GIRLS AT THE informal school run by an NGO in Uttari Rampur.

men on motorbikes proceeding from the mela ground straight to the adjacent brothel. I was shocked by the extreme youth of some of the girls who were sitting in front of their small adobe huts on either side of the streets. Apparently, every year, at least eight or

nine very young girls were brought to the mela and forced into the trade through a traditional ritual, *missi mehendi*. I had discussed the situation with the District Magistrate and the Superintendent of Police the very next day. As a result, the Nautanki tent and

the film shows were closed down for a year. They were resumed when the District Magistrate got a different posting.

Tinku said Apne Aap had filed two petitions this year regarding the illicit activities the minor girls were forced to engage in at the theatre at the fair and about their exploitation in the adjacent red light area. Acting upon the information given by the Apne Aap workers, the District Magistrate had instructed the Superintendent of Police to look into the matter. However, according to Tinku, the raid was conducted only in the red light area, while the mela was left undisturbed. Further, the usual protocol in this matter was not maintained since neither Apne Aap nor any other NGO was involved in the raid. Tinku said they were shocked that together with trafficked girls, some minors living in the red light area but who not were engaged in the trade had also been picked up by the police. The daughter of one of the organisers of Apne Aap in the area had also been picked up arbitrarily. Tinku said they were able to take the girl back into their custody but could not get the custody of the other rescued girls. She said they protested against the manner in which the raid had been conducted and against the inclusion of the names of two Apne Aap workers in the raid team, when the truth was different.

Apne Aap activists took exception to the Child Welfare Committee handing over six girls, three of whom had been proved to be over 18 years of age, to alleged traffickers who had posed as their guardians, despite repeated protests. The other 18 girls were sent to the Tatwasi Samaj Kalyan Samiti in Purnea. Surprisingly, according to Tinku, only six of them were kept back while the rest were arbitrarily handed over to their so-called guardians within a month. As Tinku said, "At least in six of these cases, the guardians have ensured that the girls go back to the sex trade."

Kalam was one of the key activists who had identified the traffickers and the girls trafficked by them. But three and a half months later, on June 1, he

PHOTOGRAPHS BY MALINI BHATTACHARYA

was called to the Forbesganj police station and was informed by the Deputy Superintendent of Police that he was being arrested for being involved in trafficking. Apparently, one of the six girls languishing at the Purnea home had given a statement under Section 164 of the CrPC in which she had said that among those who had trafficked her there was one Kalam who had forced her to marry a married man named Gaffar, who had subsequently prostituted her. After being arrested on the strength of a first information report, which did not clearly name him or specify his role as a trafficker, a handcuffed Kalam was photographed along with the triumphant DSP, in violation of a Supreme Court order.

The media report quoted the Superintendent of Police as saying that Ruchira Gupta, the founder and director of Apne Aap, had threatened the DSP over the phone and that a station diary had been lodged against the NGO. The media report was later found to be without basis, but there can be no doubt that it was an attempt to intimidate the organisation because it was trying to find justice for Kalam.

Kalam eventually got bail and the bail order states that no significant or substantial evidence has been found against him. But, of course, the case against him remains, even while the other persons mentioned as traffickers in the FIR are still at large. There is also an ongoing campaign against the school run by Apne Aap, which has been brought under the Kasturba Gandhi Balika Vidyalaya Scheme after prolonged efforts. A part of the district administration has joined the campaign. Now that the school has found a footing in the locality and is benefiting children who had little access to education and were vulnerable to the vicious atmosphere around them, it would be a great pity if, on the basis of unsubstantiated excuses, it is closed down or handed over to others without the same credentials as Apne Aap.

One does not know how this story will end, but on the basis of the data I was able to gather for the NCW report, I would like to express my apprehen-

sions in this matter. The Nutt community was originally tribal and had at one time been forced to adopt a nomadic way of life. It was stigmatised as a criminal tribe by the British and became a so-called “de-notified tribe” in independent India.

While in States such as Rajasthan they have Scheduled Tribes status, in Bihar they are included in the Other Backward Classes (OBC) category but continue to be marginalised unlike some other OBC communities. Poverty and underdevelopment, even after they gave up their nomadic ways, combined with the uneven power structures in society, helped perpetuate among them the so-called custom of pressing

their girls into prostitution, and eventually some of their settlements turned into red light areas and centres of trafficking.

A LUCRATIVE BUSINESS

What is terrifying is that the so-called custom has turned into a lucrative business running into crores of rupees. Alternative livelihoods are scarce, and the strong network of traffickers extends right into the families and the community panchayats. Their settlements in Forbesganj, close to the borders of Nepal, Sikkim and north Bengal, are not just source areas but also transit and destination points for trafficking.

The women not only are breadwinners for their families but are made to pay money from their earnings by a *hafta* system to people who run the trade, who include panchayat members, politically powerful elements and some sections of the police. Any attempt to leave the trade could end in violence and even death. The violence is perpetrated not only through local goons but by the male members in the families. In fact, it seems as if society at large is also putting pressure on the community so that it would be natural for all women to turn to prostitution and all men to become traffickers and pimps.

In the community to which Kalam belongs, he is an exception. But neither his own community nor those who wield social and political power seem to be ready to tolerate exceptions. Paradoxically, Kalam would have been less exposed to danger had he got criminalised. Since this is a closely knit clan, everyone is related to everyone else by ties of kinship, and Kalam, by remaining opposed to the exploitation of the women of his community, is committing an offence against his blood ties. But what is more unfortunate is that the social and political forces outside his own community also seem to be inclined towards perpetuating the fate of the Nutts. □

Malini Bhattacharya is a former member of the National Commission for Women.

Nomadic past

THE Nutts are a marginalised community of tribal origin, now settled in parts of Bihar and Rajasthan. From whatever mythical memories of their past they retain, one learns that they were nomadic and possessed exceptional acrobatic skills.

The half-forgotten bardic songs of “Alha-Udal” note that Nutts had shown great bravery as contingents in the army of Rana Pratap in his battles against the Mughals. They never took up agriculture. They were settled on homestead land in some parts of Bihar and Rajasthan by their feudal overlords who used their military prowess for their own purposes.

Perhaps, even in pre-colonial times these feudal lords extracted sexual services from Nutt women, which would explain the evolution of the so-called custom prevalent in the community even today. It is a closed and largely endogamous community. Many of them have a Hindu and a Muslim name, suggesting that they have been on the margins of both the religions without being accepted by either.

Wage-led growth

Argentina is a shining example of an alternative economic strategy paying significant dividends in terms of generating inclusive growth.

AS the global economy sputters into yet another recession in the ongoing drama generated by the 2008 financial crisis, it is easy to be pessimistic. Many countries that are critical to overall trends in the world economy seem to be locked into a self-defeating downward spiral of fiscal austerity measures that add further negative impulses to economies that are already affected by the impact of the initial crisis and the winding down of excessive private debt. So gross domestic product (GDP) stagnates or declines, making the indicators that financial markets are obsessed with (such as public deficit or debt to GDP ratios) look that much worse, further adding to the pressures even on finance.

Everyone hopes for salvation from higher exports, which is a false hope in a period when almost all economies are trying the same thing. A big part of the problem is the continued dominance of an economic policy model that has clearly failed and currently has no answers to deal with the escalating problems.

Clearly, this situation cannot carry on for very long, and on current trends an unhappy outcome cannot be very distant. But this is not inevitable – even in this extreme situation it is possible to imagine some ways out of the current predicament, if only policymakers have the will to embark on a different trajectory.

Fortunately, there are some bright spots of alternative macroeconomic trajectories, particularly in Latin America. One example of an alternative strategy that has paid significant dividends in terms of generating more



Preoccupations

JAYATI GHOSH

inclusive growth is Argentina. Curiously, this country regularly gets a hard time in the global financial media despite its evident success in terms of relatively stable GDP and employment growth. Could this be because its strategy has defied so many of the current orthodoxies that are so clearly failing in most other places? Or could this be because more knowledge about the actual nature of the policies that have been applied in Argentina might encourage more governments to think differently from the current mainstream?

Consider just some of these facts. Since 2003 (when Argentina had just been through one of the most severe financial crises ever experienced by any developing country), real GDP has grown at an annual rate of around 9 per cent. This has been sustained not just by increasing exports fed by the global commodity boom (which is the point generally harped upon by most

external commentators) but by sustained expansion of the domestic market, strengthening of production and increase in investment, which reached historically high rates of 23 per cent in the period 2003-09. This was not all or only about public investment – there were nearly 130,000 new private enterprises registered between 2003 and 2009. This investment, in turn, powered a substantial increase in labour productivity, which had languished through the earlier two decades.

The increase in the domestic market was, in turn, led by labour market dynamics and the expansion of social protection systems – precisely in the manner advocated by proponents of wage-led growth. Total employment increased substantially, much of it in better quality jobs. There was a significant increase in formal employment, which increased by 70 per cent between 2002 and 2009. The ratio of registered workers to total working-age population (which had stagnated for the previous 25 years) increased by 30 per cent in just these seven years, such that by 2009, the aggregate unemployment rate fell from 21.5 per cent in 2002 to 7.9 per cent in 2010.

And even during the latest crisis, the economy has shown substantial resilience in growth and employment terms. The unemployment rate has not changed and real wages have not suffered (although partly as a result of this, it is true that new problems are emerging in the form of inflation and its consequences). This is due to a combination of macroeconomic and active labour market policies, as noted in what follows.

A publication from the Ministry of Labour, Employment and Social Secu-

rity of the Government of Argentina (“Work and Employment in the Bicentenary: Changes in employment and social protection dynamics for an extended inclusion, 2003-10”, Buenos Aires, 2010) highlights some of the factors behind this impressive achievement.

Basically, in 2003 the government sought to change the economic policy model quite drastically, to move away from the dynamics of exclusion and marginalisation in labour markets, which had become the norm in the economy since the mid-1970s. The promotion of quality, productive and fairly remunerated employment and the expansion and redefinition of social protection, focussed on protecting a greater part of the population, were the main tools through which the model sought to improve the living conditions of the people. These turned out to have significant macroeconomic implications as well, providing a vibrant source of domestic effective demand that could encourage the proliferation of new productive employment.

Therefore the economic advantage provided by a boom in primary commodity exports was not concentrated in the hands of a few privileged elite groups as had hitherto been the case, but spread much more widely amongst the population. And the expansion of public employment and social protection provided opportunities for employment diversification within the economy, as well as assisting the productivity improvements that have been witnessed in the recent past.

Some of the early changes were legislative or administrative in nature. In 2004, Law 25877, for labour regulation was passed. The National Council for Employment, Productivity and Minimum Salary was reactivated to decide upon and enforce minimum wage and salary rules. The National Plan for Work Regularisation (PNRT) was set in motion with the goal of expanding the Ministry’s capability to inspect and control employers’ compliance with labour laws and social security contributions.

Importantly, collective bargaining – which had languished under the earlier regimes – was brought back to centre stage, with a dramatic (more than fivefold) increase in the number of agreements and negotiations approved each year. In addition, negotiation activity at the branch level was reintroduced so as to reach a greater number of workers and “collectivise” the benefits, as opposed to the “individualisation” of employment relationships that had predominated in the 1990s.

As a result, collectively agreed salaries accounted for 81 per cent of the wage bills of enterprises in 2009, compared with less than 50 per cent in 2001. As a result of these changes, the wage share of national income increased from 34.3 per cent in 2002 to 43.6 per cent in 2008. Another major element was the doubling of social protection grants. There was an increase in the value of pensions and extension in coverage, including the introduction of social pensions for defined categories. Today, it is estimated that the pension system covers 84 per cent of the elderly population.

At the same time, social protection for children and adolescents was extended, going from 37 per cent coverage (in terms of monetary transfers) in 1997 to 86 per cent in 2009. Some of this was the result of the expansion of registered employment, which allowed an extension of the coverage of family allowances. Those who were excluded from this have benefited from the creation of a non-contributive subsystem: the Universal Per-Child Allowance for Social Protection, which currently reaches about 3.5 million children.

As a result of this emphasis on inclusion and social protection, social spending expenditures of the government amounted to nearly a quarter of GDP in 2008. This and other measures outlined obviously had a direct effect on income distribution. Argentina was known as one of the more unequal countries in the world, and income inequality had been steadily increasing since the mid-1970s. In the

past decade this was finally reversed, as the Gini coefficient for income distribution improved by 16 per cent between 2002 and 2009.

In the current crisis, these measures have been sought to be maintained and even expanded. There has been a focus on countercyclical macroeconomic policies, including public works, housing plans, incentives for stimulation of productive sectors, exports, pre-financing loans and loans for small enterprises. In all policies implemented, an employment preservation clause was included as a requirement to access and maintain the benefits and subsidies. In addition, the reach of the Productive Recovery Programme (REPRO, through which the state subsidises a part of the workers’ salaries in enterprises in a critical situation) was extended.

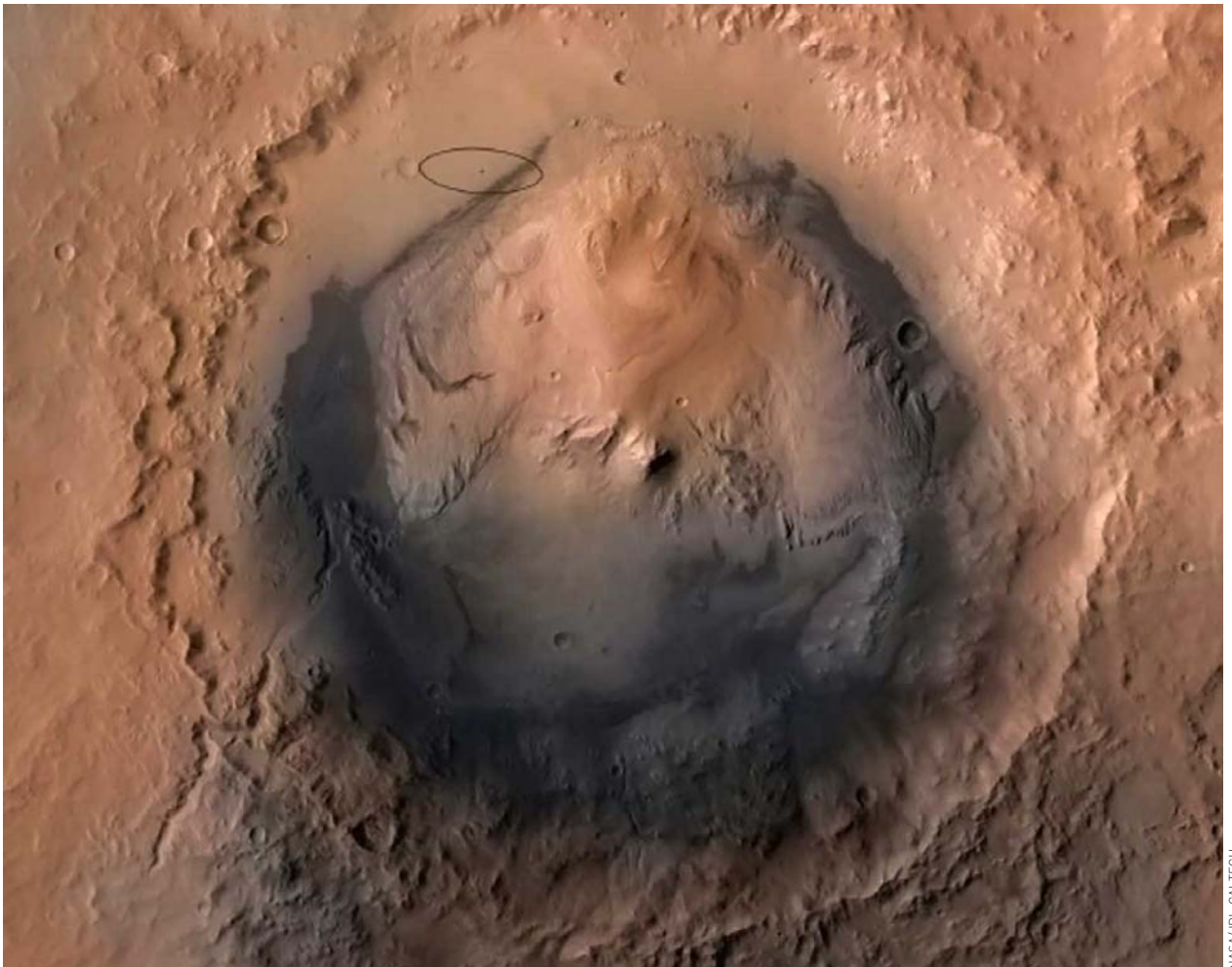
Fiscal incentives were provided for formal hiring and regularisation of non-registered employment. There was also a strengthening of the active training and employment policies targeted at people that needed to develop their skills further in order to enhance their occupational insertion opportunities. Active income policies were maintained so that as of the last quarter of 2008 the raises in retirement and pension transfers were guaranteed by law. Collective labour bargaining was sustained. There was a reduction in income taxes for salaried workers, and amounts of the family allowances were increased. Also, there were monetary transfer programmes for vulnerable or impoverished groups.

Obviously, these policies make severe fiscal demands, and the current inflationary pressures in Argentina do suggest that further increases will have to be moderated.

However, this very different approach to social and economic distribution and the positive macroeconomic effects it has generated thus far show that there are other viable economic trajectories that can deliver both growth and economic justice. This, in turn, provides valuable lessons for the rest of the world. □

Milestone on Mars

NASA lands a robotic rover precisely and softly on the red planet to study past and present processes on its surface. BY R. RAMACHANDRAN

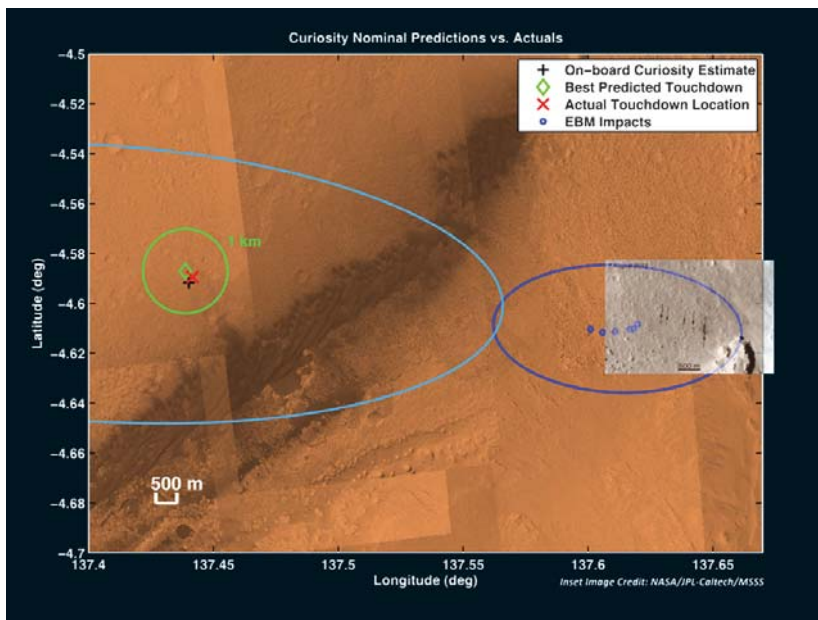


NASA/JPL-CALTECH

LANDING ELLIPSE IN the Gale Crater, an overhead view with north at the top.

In a sense, by assessing whether the Gale Crater has had environmental conditions suitable for habitability, **the MSL is a prospecting mission** for future missions that may carry advanced instruments to detect life.

ON August 6, at 05:17:57.3 hours UTC (Coordinated Universal Time), the National Aeronautics and Space Administration's (NASA) Mars mission, called the Mars Science Laboratory (MSL), spectacularly delivered to Mars a robotic rover, Curiosity, by landing it precisely and softly within a kilometre of the targeted landing site in the Gale Crater of the red planet. The touchdown not only was very precise but was achieved by using a hitherto untested sky-crane technique (see box). Launched on November 26, 2011, aboard the launch vehicle Atlas V 541 from



THE RED “X” marks the spot where NASA’s Curiosity rover landed on Mars. Early estimates made immediately after the rover landed (green diamond) indicated that it touched down about 2.4 km from the point it was targeting, to the left and out of sight on this graphic. This is well within the targeted landing region, called the landing ellipse, marked by the light blue line. After landing, images from the High Resolution Imaging Science Experiment on NASA’s Mars Reconnaissance Orbiter were able to pinpoint the rover’s precise location, as shown by the red “X”.

Cape Canaveral, Florida, at 15:02:00.0 hrs UTC, its journey across the earth-Mars distance (at the time of landing) of 248 million km had lasted about 254 days. The expected operational lifetime of the primary mission on Mars surface is a full Mars year, which is equivalent to 687 earth days, or 669 Martian days, which are called Sols. But this could be more thanks to the long-lasting power supply based on a radioisotope thermoelectric generator (nuclear battery) that produces electricity from the heat of radioactive decay of 4.8 kg of plutonium-238.

According to a NASA fact sheet, the overarching scientific objective of the mission is to assess whether the landing area and the area Curiosity will explore have ever been a potential habitat for Martian life (essentially microbial) – their habitability and evidence of any life in rock record. These studies form part of a broader investigation of past and present processes in

Mars’ atmosphere and on its surface. These will include the study of the Martian climate and geology, while at the same time gathering information for a future manned mission to Mars.

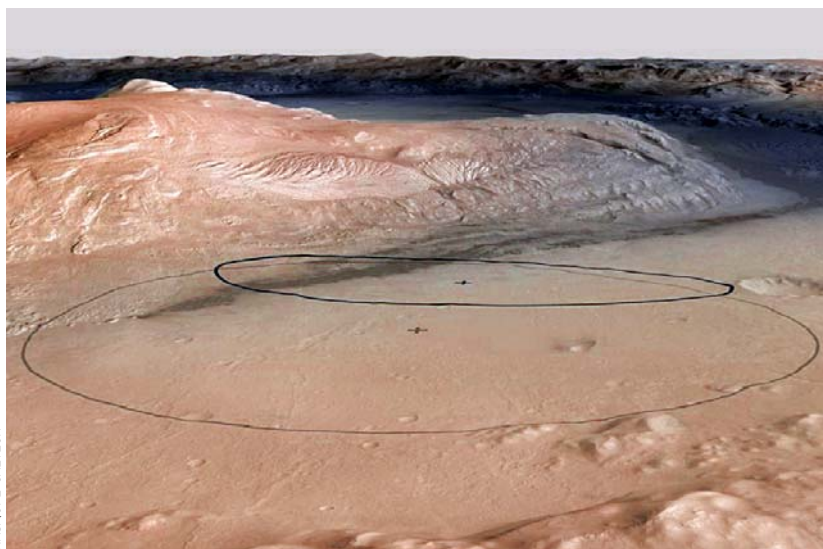
Every environment on the earth containing liquid water has supported microbial life, and microbes form most of the living matter on the earth. So, scientists expect that any life, if it exists or existed at all, will be microbial. “Follow the water” remains the essential strategy of the MSL mission as well, as it has been for all NASA’s Mars exploration missions since the mid-1990s. Since organic or carbon-containing compounds are important for life, the mission is designed to detect these and categorise them as well. Thus it adds “follow the carbon” component to “follow the water” theme.

According to NASA, six main areas of study will contribute to the overall scientific objective: (1) Determining Martian surface mineralogy and near-

surface geology; (2) Detecting essential biochemical building blocks of life (biosignatures); (3) Interpretation of the evolutionary processes responsible for the observed nature of Martian rocks and soils; (4) Profiling the evolution of the Martian atmosphere – which at present chiefly comprises carbon dioxide (95.3 per cent), nitrogen (2.7 per cent) and argon (1.6 per cent) – over four billion years since the formation of the solar system; (5) Establishing the current state and distribution of water and carbon cycles on the planet; and (6) Characterising the different components of surface radiation, including galactic radiation, cosmic radiation, solar proton events, and secondary neutrons, and determining its broad spectrum. (Towards this, on-board instruments have already measured the radiation exposure to the spacecraft during its journey to Mars.)

Curiosity is almost twice as long (about three metres) and at 899 kilogram is five times as heavy as NASA’s twin Mars Exploration Rovers (MERs), Spirit and Opportunity, which were launched in 2003. It has inherited many design elements and technologies from them, including the six-wheel drive, a rocker-bogie suspension system, and cameras mounted on a mast for the mission teams on the earth to choose targets for exploration and driving routes. Curiosity carries the most advanced payload of scientific equipment ever used on Mars’ surface. The payload is equipped with a suite of 10 scientific instruments and a 2.1 m robotic arm that can drill into rocks, scoop up soil and deliver samples to the test chambers inside the rover.

In addition to its sample-acquisition capabilities, Curiosity will carry an RTG power pack, computers, inertial measurement unit (IMU) for navigation and devices for communication (in both X and ultra high frequency, or UHF, bands). It has the capability to drive for 20 kilometres or more during the mission’s lifetime of 98 weeks. Besides the science payload on board, sensors on the heat shield



NASA/JPL-CALTECH

THIS IMAGE SHOWS changes in the target landing area. The larger 25 km x 20 km ellipse was the target area before early June 2012, when the project revised it to the smaller 20 km x 7 km ellipse centred closer to the foot of Mount Sharp.

that were discarded during the entry, descent and landing (EDL) phase of the spacecraft has already gathered data about Mars' atmosphere and the spacecraft's performance during its descent.

In April 2004, NASA invited proposals for scientific investigations and instruments to be put on board the MSL. In accordance with the planned objectives of the mission, eight proposals were selected and, in addition, NASA entered into an agreement with Russia and Spain for carrying instruments provided by them. The 10 instruments on the MSL together weigh about 76 kg compared with the combined weight of 5 kg of five instruments aboard Spirit and Opportunity. The mass of one of the instruments, called sample analysis at Mars (SAM), alone is 40 kg, four times the total weight of Sojourner, NASA's first rover used in its 1997 mission.

SAM is a suite of instruments meant to analyse atmospheric samples and materials collected and delivered by the robotic arm. It includes a gas chromatograph, a mass spectrometer and a tunable laser spectrometer. With their combined capabilities, a wide range of organic compounds can be

identified. Isotope ratios are signatures to the evolution of water and atmosphere on Mars. The SAM instruments can also determine the ratios of different isotopes of key elements.

Samples delivered by the robotic arm will also be analysed by the chemistry and mineralogy (CheMin) X-ray diffraction and X-ray fluorescent instrument. It is designed to measure bulk composition and identify and quantify the minerals in rocks and soils. ChemCam is a suite of remote sensing instruments, which include a laser-induced breakdown spectroscopy (LIBS) system, being flown for the first time for planetary exploration, and a remote micro-imager (RMI). ChemCam can use a laser pulse to vaporise thin layers of material from Martian rock and soil targets up to 7 m away, whose constituent atoms LIBS can identify. A detailed image of the area illuminated by the laser beam can be taken by the RMI. The laser and the RMI are placed on top of the rover's mast. This data will be used by researchers, together with data from the other cameras, to choose targets to be analysed by other instruments.

The Alpha particle X-ray spec-

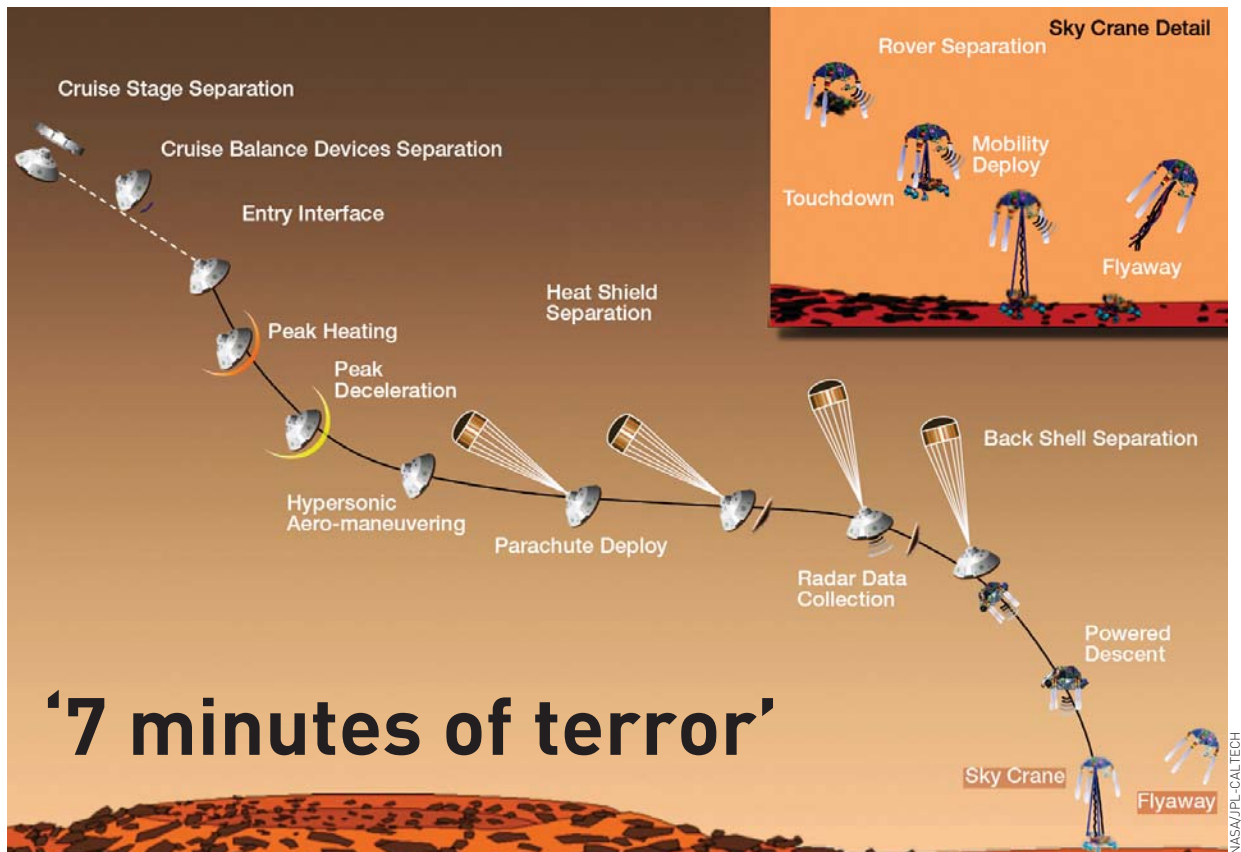


NASA/JPL-CALTECH

THIS FULL-RESOLUTION IMAGE, obtained about three seconds after the heat shield separation and about two and a half minutes before touchdown, shows the heat shield during the rover's descent to the surface of Mars on August 6. The image was obtained by the Mars Descent Imager instrument known as MARDI and shows the 4.5-metre diameter heat shield when it was about 16 metres from the spacecraft.

rometer (APXS), also located on the arm, is designed to quantify the relative abundance of different elements in the Martian rocks and soils. The radiation assessment detector (RAD) is an instrument for assessing the radiation environment on the Mars surface. This information will form the input for planning human exploration of Mars and assessing the planet's ability to sustain life.

The Russian Federal Space Agency provided the dynamic albedo of neutrons (DAN) to measure subsurface hydrogen up to one metre below the surface. Detection of hydrogen is a clue to the presence of water molecules in the form of ice or bound to other minerals. The Spanish Ministry of Education and Science has supplied the rover environment monitoring station (REMS), which is a kind of meteorological package to measure atmospheric pressure, temperature, winds and ultraviolet radiation levels. An equipment called sample acquisition/sample preparation and handling system includes tools to remove dust from rock surfaces, scoop up soil, drill into rocks and gather powdered samples from rocks and sort samples by particle size and finally deliver these to the



'7 minutes of terror'

A PROFILE OF entry, descent and landing events for a typical case. The actual event timings depended on the Martian atmospheric conditions on August 6.

SCIENTISTS and engineers of the National Aeronautics and Space Administration (NASA) have termed the intense phase of entry, descent and landing (EDL) of the Mars Science Laboratory (MSL) mission, with the rover Curiosity stationary on the surface, as "seven minutes of terror". For, this phase was estimated to last 416 seconds. During the actual landing, this phase lasted about 436 seconds. It was so named because of the great challenges its accomplishment posed and the enormous uncertainty of achieving it given the many unknown factors about the Martian atmosphere and surface. It is perhaps the most complex landing ever attempted in the history of space exploration.

The EDL phase began when the spacecraft reached the top of the Mar-

tian atmosphere. From 10 minutes before entry, when the cruise stage is jettisoned, to the cutting of sky-crane bridle, the landing sequence involves six spacecraft configurations, the firing of 76 pyrotechnic devices for release of parts to be separated or deployed, the deploying of the largest supersonic parachute ever built, and more than 500,000 lines of code to be read by the on-board systems for operation.

The atmospheric entry interface point was set at launch to be 131.1 kilometres above the ground elevation of the landing site at Gale Crater. The entry point was, however, not directly above the landing site. While descending from that altitude, the MSL also travelled eastward relative to the red planet, covering a ground track of

about 630 km between the entry point and the target.

Ten minutes before the atmospheric entry, the spacecraft shed the cruise stage. The on-board MSL Entry, Descent and Landing Instrument (MEDLI) suite on board began to take measurements. A minute after the cruise-stage separation, small rockets on the back shell stopped the 2 rpm (revolutions per minute) spin that the spacecraft had during the cruise and approach phases. Then a manoeuvre called "turn to entry" was performed when the same back-shell thrusters oriented the spacecraft so that the heat shield faced forward.

After this, the back shell discarded two solid tungsten weights, called the Cruise Balance Mass Devices (CBMDs), each weighing about 75 kg.

This was to shift the centre of mass of the spacecraft from its earlier position during the cruise and approach on the spacecraft's spin axis. This off-setting of the centre of mass when the spacecraft experienced pressure from interaction with the atmosphere enabled the MSL to generate lift and fly through the atmosphere. Use of atmospheric lift during the entry phase increased the mission's ability to deliver a heavier robotic payload as compared to the earlier landing missions.

The technique of guided entry during this phase enabled the spacecraft to use that lift to manoeuvre through unpredictable variations in the density of the atmosphere and thus improve the accuracy of landing. During the guided-entry stage, back-shell thrusters adjusted the angle and direction of the lift to control its descent and enable it to perform S turns, called bank reversals, to control its left-right departures from the target site due to atmospheric effects and spacecraft modelling errors. These actions were carried out autonomously by the spacecraft using data from the on-board gyroscope-based inertial navigation unit.

Over nine-tenths of the deceleration during the EDL phase occurs owing to friction with the Martian atmosphere before the parachute opens. Peak heating should have occurred at 75 seconds after atmospheric entry, with the temperature at the external surface of the heat shield being 2100°C. Peak deceleration, which would have been in the range 10-11 g, would have occurred 10 seconds later. A few seconds before the parachute was deployed, another set of tungsten weights, each weighing about 25 kg and called the Entry Balance Mass Devices (EBMDs), was jettisoned to shift the centre of mass back to the axis of symmetry of the spacecraft required for proper parachute-aided descent.

The parachute opened at about 260 seconds after entry, at an alti-

tude of about 11 km, when the substantially reduced velocity was still about 1,500 km/hr. After about 20 seconds of parachute deployment, the heat shield separated and dropped away. At this point, the spacecraft was still about 8 km high and travelled at a velocity of about 440 km/hr. As the heat shield separated, the Mars Descent Imager (MDI) began to take video in the direction of flight through the landing. The rover and the descent stage rocket backpack remained attached to the back shell carrying the parachute.

The back shell and the parachute separated from the rover about 85 seconds after the heat-shield separation, at which instant the spacecraft was 1.6 km above the ground with a velocity of about 290 km/hr. There are eight retro-rockets with throttle capability on the descent stage, all of which fire for a powered descent of the spacecraft. These landing engines decelerated the spacecraft to about 2.75 km/hr and this velocity was maintained until touchdown.

Four of the eight engines were shut off at this instant. Soon afterwards, nylon cords began to spool out from the bridle on the descent stage and lower the rover with sky crane manoeuvre. The rover then detached from the descent stage (about 120 seconds after heat-shield separation) but still was attached to it by the tether and the data umbilical cord. The height then (about 12 sec before touchdown) was about 20 metres. Just before touchdown, the rover's wheels and suspension system, which also act as the landing gear, got deployed. The cords were fully spooled out as the spacecraft continued to descend. So at touchdown, too, the velocity remained at 2.75 km/hr. As soon as touchdown was sensed, the connecting cords severed and the descent stage flew out of the way, bringing the rover's velocity to zero. The stage landed 650 m away from the rover's position.

R. Ramachandran

analysing instruments on board Curiosity.

In all Curiosity actually carries 17 cameras, which include MastCam, Mars Hand Lens Imager (MAHLI) and MSL Mars Descent Imager (MARDI). Of these, MARDI has been used during the descent. Its high-definition colour images and video, taken with 1.3 millisecond exposure time starting from a height of 3.7 km to 5 m from the ground, are already available. MAHLI is mounted on the rover arm and is designed to take extreme close-ups of rocks, soil and, if present, ice, with a resolution smaller than the width of a human hair (50 micrometre). It will also be able to focus on objects that hard for the rover and its arm to reach. The MastCam mounted at about the height of the human eye will take pictures of the rover's surroundings in high resolution stereo and colour. It also has the capability to take and store high-definition video images. It will also view materials collected by the arm. In addition to the imaging requirements for science, the rover also has a black and white stereo navigation camera (NavCam) and a low-slung stereo hazard avoidance camera (HazCam).

The Gale Crater, which lies in the equatorial region at 4.5° S latitude, was chosen by NASA scientists to serve as the laboratory for the mission from a list of 60 potential sites. "The site offers a visually dramatic landscape and also great potential for significant science findings," said Jim Green, Director of NASA's Planetary Science Division. There were some engineering constraints as well that led to Gale as the choice.

The crater is believed to have materials washed down from its wall. From the data obtained from earlier orbiter missions, the landing site is also known to contain a very bright-coloured dense type of rock, which is unlike any rock previously studied on Mars. It may be the first target for investigation. Within the crater is a mountain named Aeolis Mons (Mount Sharp), which rises about 5.5 km above the crater floor. It consists of layered

rocks, and its stratification suggests that the mountain is a surviving remnant of an extensive series of deposits that were laid down after a massive impact that excavated Gale Crater more than three billion years ago. The layers may contain a historical record of environmental conditions when each stratum was deposited, including minerals that form in water.

An area of great interest for scientists lies at the edge of the landing site. Instruments carried by past orbiters

have detected signs of clay minerals and sulphate salts. The region also has an alluvial fan that is likely to have been formed by water-carried sediments. According to one hypothesis about Martian geology, these minerals reflect changes in the Martian environment, the amount of water on the Martian surface in particular. Perhaps, these minerals are traps for organic compounds – potential biosignatures of life – and are protecting them from oxidation.

The guided entry technology that enabled Curiosity to land more precisely than previous Mars missions, coupled with its navigating ability, meant that the main science destination for the mission could be outside of the area that would have otherwise been considered safe for landing. The Gale Crater is about 154 km in diameter and the targeted landing area within it was a 20 km x 7 km ellipse. The landing ellipse, with a 99 per cent probability of landing within it, had

Landing technologies

CONCEPTUALLY and technologically, the entry, descent and landing (EDL) phase for the Mars Science Laboratory (MSL) mission was the most complex one that NASA had ever attempted in any of its planetary missions. It included a combination of technologies derived from past Mars missions and some new technologies. The most challenging among these was the guided entry and a sky-crane touchdown system to land the massive (899 kilogram) rover, “Curiosity”, softly on the Martian surface instead of the air-bag landing used in earlier Mars missions. This ensured that the rover and its parts, in particular the 0 instruments on-board, did not suffer any damage as it decelerated from about 21,000 kilometres/hour at the top of the Martian atmosphere to zero at the surface within just seven minutes. Also, it could precisely place the rover on its wheels at its chosen landing site.

These new technologies essentially defined the four components of the EDL architecture:

Guided Entry: Precision landing technologies not only allowed Curiosity to have a safe landing but greatly improved its landing accuracy. The spacecraft was controlled by small rockets during the descent through the Martian atmosphere. As compared to the 150 km x 20 km landing

ellipse (which defines the landing area with high probability) of the earlier Mars Exploration Rovers (MERs), Spirit and Opportunity, the landing ellipse for the MSL was 20 km x 7 km. This capability removed the uncertainties of landing hazards, such as steep slopes or rocky terrain that might be present in larger landing ellipses. Indeed, the spacecraft landed within 1 km of the targeted site.

Powered Descent: To ensure a robust and efficient touchdown, unlike in any of NASA’s previous rover missions, the MSL used a powered descent, instead of being delivered by way of airbags. Rockets continued to control the spacecraft’s descent until the rover separated from its final delivery system, the sky crane.

Bigger parachute: Like Viking, Pathfinder and the MERs, the MSL, too, was slowed down by a large parachute belonging to NASA’s Mars mission heritage. The MSL’s parachute is part of a long-term Mars parachute technology development effort. Parachute designs are based on the forces that the parachute will be subjected to during descent. Such load calculations are dependent on the atmospheric density, the spacecraft’s velocity and the parachute’s drag area and mass. While the basic design remained the same, for the MSL mission the parachute was about 10 per

cent larger than the one used in the MER mission, which itself was 40 per cent larger than the Pathfinder mission. It is the largest supersonic parachute ever built.

Sky Crane: The MSL is the first mission to use the “soft landing” technique. Unlike earlier missions, the MSL is more capable and carries more instruments, and hence is much bigger in size. To accomplish a soft landing of the huge rover, the sky crane method was designed.

After the parachute significantly slowed down the vehicle, and the heat shield was discarded, the descent stage separated from the back shell and eased the spacecraft towards the surface. Four steerable engines then slowed down the descent stage even further to eliminate the effects of any horizontal winds. When the vehicle slowed to nearly zero velocity, the rover was released from the descent stage. The vehicle was first stabilised with the help of retro-rockets and then lowered using tether just as was done with Spirit and Opportunity. The difference, however, was that in the case of the MSL a trio of tethers and an electrical “umbilical cord” were used to maintain communication with the stage.

Unlike its predecessors, the MSL is designed to be “ready to rove” upon landing. In order to enable this, it

originally been set as 20 km x 25 km, which is about one-third the size of landing ellipses for earlier MERs.

However, during the MSL's journey to Mars, continuing analysis of variables of the EDL phase led to confidence in even higher precision in landing. This allowed mission planners to shrink the target area to an almost 20 km x 7 km ellipse. Even with the smaller ellipse, Curiosity could touch down at a safe distance from steep slopes at the edge of Mt. Sharp. In the coming

shed its shell on the way to the surface itself. Its front mobility system – the wheels and suspension – was also deployed while the rover was headed to the Martian surface. The MERs, on the other hand, had to wait for their lander petals to open after touchdown. The bridle on the descent stage that connected it to the rover with tether was cut once the on-board computer sensed that touchdown was successful. The descent stage then flew away at full throttle from the rover to a crash landing far from the MSL.

In addition to these four components, the EDL phase also included the technology of “descent imaging” using advanced terrain-sensing technologies. Descent imaging on the MSL enabled early determination about the precise place the rover would land on the basis of the images of the Martian surface taken on the way down. This measurement helped decide which retro-rockets should be fired to keep the spacecraft within the targeted landing area. These images could allow scientists observe the geological processes at a variety of scales, sample the horizontal wind profile, and make detailed geologic, geomorphic and traverse planning and relief maps of the landing site. The technique could also be used in future missions for monitoring and avoidance of surface hazards during the descent through the atmosphere.

R. Ramachandran



NASA/JPL-CALTECH

AN ARTIST'S CONCEPT shows the sky-crane manoeuvre during the descent of Curiosity. The rover was connected to the descent stage by three nylon tethers and by an umbilical providing a power and communication connection. The bridle extended to full length, about 7.5 metres, as the descent stage continued descending. When touchdown was detected, the bridle was cut at the rover end, and the descent stage flew off to stay clear of the landing site.

months, Curiosity will drive to science destinations on Mt. Sharp, outside of the landing ellipse. The trimming of the landing ellipse has meant that the landing was closer to Mt. Sharp and the distance that the rover will have to travel to reach Mt. Sharp is reduced by almost half.

The science targets identified for the rover to investigate initially lie in the lower layers of the mountain. According to NASA, getting to key targets at the lower layers of Mt. Sharp may consume a large part of the prime mission period. The route may require the rover to move through some difficult terrains such as sand dunes, hills and canyons. The rover has been engineered to roll over obstacles up to 65 cm high and travel up to 200 m a day. If Curiosity continues to work properly

after the 98-week period, it might begin to explore the younger layers of Mt. Sharp in an extended mission.

The MSL mission by itself, as the NASA background document notes, is not designed to answer the open question whether life has existed on Mars. Curiosity will not carry out investigations to detect processes indicative of present-day biological metabolism. It also does not have the ability to image micro-organisms or their fossil equivalents.

In some sense, by assessing whether the Gale Crater has had environmental conditions suitable for habitability and preservation of evidence of life, the MSL is a prospecting mission for future missions that may carry advanced instruments for detecting life. □

Setting standards

Bangalore is becoming the centre of high-quality education in a variety of fields. BY A SPECIAL CORRESPONDENT

The Rajarajeswari Group of Institutions aims to develop world-class institutions in the fields of medicine, engineering, management, paramedical sciences and other emerging technologies.

BANGALORE has been a centre for educational, scientific and research institutions for more than half a century. Many of these institutions came up in the city as a logical sequel to the presence of public sector enterprises such as Hindustan Aeronautics Limited (HAL), Bharat Electronics Limited (BEL), Bharat Earth Movers Limited (BEML) and the Indian Telephone Industries (ITI), which were established in the 1950s as part of the country's drive towards self-reliance.

NO DEARTH OF OPPORTUNITIES

Institutions such as the RajaRajeswari Medical College and Hospital (RRMCH) and the Xavier Institute of Management and Entrepreneurship (XIME) are turning Bangalore into a centre of high-quality education in their respective fields. Leading educationists (see interviews) point out that there is no dearth of quality educational and coaching opportunities in the city. The city also has facilities for training candidates for the civil services, hitherto considered the preserve of cities such as Delhi, Lucknow and Hyderabad. Spardha Chaitra and Universal Coaching Centre (UCC), among others, have ensured that civil services aspirants from Karnataka do not have to look beyond Bangalore for getting high-quality coaching and support for their preparation.

The RRMCH is part of the Rajara-

jeswari Group of Institutions (RGI). The group aims to develop world-class institutions in the fields of medicine, engineering, management, paramedical sciences and other emerging technologies. In order to fulfil this aim, it set up the Moogambigai Charitable and Educational Trust in 1992. The trust manages several institutions now, including a medical college and hospital, a dental college and hospital, and colleges of nursing, physiotherapy, engineering, management studies and computer applications.

Under the leadership of A.C. Shanmugam, former Member of Parliament from Vellore, the RGI has established itself as a provider of quality education in Karnataka.

Shanmugam has established 25 educational institutions and founded three educational and charitable trusts in Chennai, Arani (in Tamil Nadu) and Bangalore. Apart from this, he has established the Dr MGR Educational and Research Institute in Chennai, of which he is the Chancellor.

Excerpts from an interview:

What is the vision of the Rajarajeswari Group of Institutions?

All our dreams can come true if we have the courage to pursue them. The Rajarajeswari Group of Institutions started with a visionary outlook to provide the kind of education that would galvanise the future of the students in a meaningful manner. We aim to equip our students with the latest know-how, courage, compassion, character and capabilities. We envision ourselves to be the most respected and sought-after educational institution in India.

What are the major achievements of the Rajarajeswari Group?

One of our major achievements is the provision of community health care services at free or at subsidised rates for the needy. We are known to encourage the pursuit of research and we provide facilities for this in all our



A.C. SHANMUGAM, CHAIRMAN, Rajarajeswari Group of Institutions.

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1. **XIME was awarded 'MMA Award for Managerial Excellence' by Madras Management Association for the year 2102.**
2. **Indian Management (May 2012) ranked XIME as 22nd best B-School in the country.**
3. **Eduniversal, Paris (October 2011) ranked XIME as 19th best in the country.**
4. **Business Today Survey (September 2011) ranked XIME as the 26th best in the country**
5. **CSR-GHRDC Survey (November 2011) ranked XIME as 28th best in the country.**

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'Committed to quality'

G. HARIPRASAD REDDY, the director of Spardha Chaitra IAS Institute, says the institute has produced very good results right from its inception in 2001. Founded by B.S. Vasanth Kumar, it is one of the earliest institutions in Karnataka providing coaching for the Union Public Service Commission (UPSC) and the Karnataka Public Service Commission (KPSC) examinations. Excerpts from an interview:



G. HARIPRASAD, DIRECTOR OF Spardha Chaitra IAS Institute.

What coaching method does Spardha Chaitra follow?

Since 2002, we have been publishing a monthly magazine and books meant for candidates appearing for competitive examinations. In the case of KPSC exams, we conduct coaching for candidates wishing to join the A, B or C Grades. We also coach candidates interested in appearing for examinations conducted for appointments in nationalised banks.

How successful have your students been in clearing the examinations?

Our results have been very good right from the time we started. In 2011-12, in all 23 candidates cleared the UPSC exam and some even made it to the Indian Administrative Service, while 36 students have been selected for the KPSC.

Eight and six candidates from Spardha Chaitra cleared the UPSC exam in 2011-12 and 2008 respectively, which only goes to show that our results are improving. This year, we are expecting even better results as more than 500 students who attended coaching have cleared the preliminary and are training for the

main examination. All our successful students are from Karnataka, mainly from the smaller towns.

What is your strength?

Our strength is the coaching we provide in subjects such as Kannada Literature and Public Administration.

What is your main advantage?

Our major advantage is that we are committed to quality. Our resource persons have a good academic background and are familiar with the civil services exam. All our faculty members have more than 25 years of experience.

The fee charged by the coaching institutes in Delhi for the subjects taught by the same people who visit our institute is astronomical, whereas we charge a nominal fee, keeping in mind the fact that our students come from rural backgrounds.

How should one go about preparing for the civil service examinations?

This exam requires only common sense and hard work. Any person with any background can apply and, with some effort, clear the exam. At Spardha Chaitra, we tell students not waste their time reading unnecessary things. We teach them how to prepare for the exam in a scientific and methodical way.

How do you keep the morale of the students high through the stressful preparatory phase?

Candidates need to be motivated for the entire duration of their preparation, and it is possible to clear the exam in the first attempt.

A Special Correspondent

educational institutions. We are also known for conducting seminars at national and international levels, which give invaluable exposure and experience to our students. The RajaRajeswari Medical College and Hospital has enrolled for all government subsidised health care schemes that cater to the poor and the needy.

In this age when health care costs are beyond the reach of the common man, the RajaRajeswari Medical College and Hospital is providing speciality and super-speciality services such as dialysis, cardiology, neurology and urology to the poorest of the poor in order to give them a new lease of life. We do this because of the heavy emphasis we place on corporate social responsibility [CSR].

Students of medical college are given adequate global exposure during their internship. They are sent on an exchange programme to the University of Hammersmith in the United Kingdom and also to universities in Dubai and Singapore.

What are your plans for the future?

We have several plans lined up. We intend to set up a virtual laboratory facility for students and doctors. Telemedicine is becoming an important aspect of health care and as such we plan to set up a centre of telemedicine. We also aim to become a one-stop service provider for speciality, super-speciality and diagnostic care services.

We are planning to increase the number of international accreditations that our medical college and hospital possesses. We would like to carve a niche segment for subsidised community health care services with the best facilities available to treat the poor and the needy.

Recognising the necessity and value of providing international exposure to our students, we are planning to have tie-ups with foreign universities to conduct exchange programmes. We are also encouraging our faculty members to take part in such programmes. We are encouraging students to become quality professionals by integrating education and services. □

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'We provide holistic coaching'

Interview with Upendra Shetty, director of UCC. BY A SPECIAL CORRESPONDENT

UPENDRA SHETTY, the director of Universal Coaching Centre (UCC) in Bangalore, started the institute in 1999 along with some friends when he failed to clear the civil services examination conducted by the Union Public Service Commission (UPSC). Although he cleared the Combined Defence Services (CDS) examination, he was keen to join the Indian Administrative Service or the Indian Police Service. He turned his failure to become an IAS officer into a success story by giving IAS aspirants good quality coaching. Excerpts from an interview:

What makes UCC one of the leading civil services coaching centres in Bangalore?

We were the first coaching institute in Bangalore to bring subject experts from Hyderabad, Lucknow and Delhi to teach the students. UCC managed to get accomplished civil services coaching experts such as Muniratnam Reddy from Hyderabad, Nadeem Hasnanin from Lucknow, and Jojo Mathews and Shashank Atom from Delhi.

We have always got experts from the best institutes. Earlier, many students from Bangalore who were preparing for the civil services examination used to go to Delhi or Hyderabad for preparation, but once UCC was established, they preferred to prepare in Bangalore itself since we have reputed faculty members.

In fact, candidates from Tamil Nadu, Andhra Pradesh and Kerala are now coming to Bangalore to study at UCC. This has become the favoured destination of south Indian students preparing for the civil services. Our teachers are experts in the process and methods of the civil services examination apart from being

experts in their respective subjects.

I am proud to say that UCC is one of the leading coaching centres in Bangalore providing holistic and exam-oriented coaching for all competitive examinations being held at the State and national levels. The institution's assets are its professional and experienced faculty and its excellent student infrastructure. It has well-furnished classrooms and libraries.

How have UCC's students fared in the civil services examinations?

In 2006, C. Soumya, who was coached at UCC, secured the 11th rank in the UPSC exam and joined the Indian Foreign Service [IFS]. In the subsequent years, UCC students secured the 21st and 32nd ranks. More than hundred candidates coached at our institute have cleared the UPSC exam so far. We are very successful in training candidates for the Karnataka Public Service Commission [KPSC] exams, as well. For the past three years, UCC students have stood first in the KPSC examination.

In all, 400 candidates coached at UCC have been selected for Group A and Group B services both in the Central and State civil services exams. We also provide coaching for other lower-level exams. Thus, more than 1,000 UCC students are now employed in various government departments.

What are the new measures you are taking to improve your coaching?



UPENDRA SHETTY: "WE are planning to expand in a big way."

One of the most important measures that we are taking to improve the quality of our coaching is to introduce interactive boards. We are setting up a studio in Delhi so that faculty members can conduct classes through video-conferencing. We are also planning to start a studio in Hyderabad so that faculty members from that city can communicate with our stu-

dents. We are also planning to expand our operations in a big way by starting franchise institutions associated with UCC in smaller towns and cities across Karnataka. This is the first time that an initiative like this is being taken, and through our interactive boards, high-quality teaching material will be beamed to our students in all these centres. We are trying to set up franchises in engineering colleges.

Do you help outstation students to get hostel facilities in Bangalore?

We help outstation candidates with hostel facilities. They can come and stay in Bangalore without any problem and prepare in peace for the highly competitive civil service examinations.

What is the key to clearing the UPSC examination?

To clear this exam, it is important that basic education is good. The students should work hard and be determined and willing to study for eight to 10 hours every day for a year. This is enough to clear the exam apart from a regular reading of *The Hindu* and *Frontline*.

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R. UPENDRA SHETTY
Director

'We encourage merit'

Interview with Prof. J. Philip, president of XIME. BY A SPECIAL CORRESPONDENT

THE Xavier Institute of Management and Entrepreneurship (XIME) was started by Professor J. Philip in 1991 in memory of his daughter Maria Philip who passed away in an accident. Prof. Philip, who studied at the Xavier Labour Relations Institute (XLRI) and Harvard Business School (HBS), started his teaching career at XLRI in 1960. He has distinguished himself in varied roles through his five-decade-old career. He has been an accomplished scholar with international credentials, a pioneering teacher, an eminent educational administrator, a prolific management author and a successful educational entrepreneur. He has also been associated with the Oberoi Hotels Group and the Indian Institute of Management (IIM), Bangalore, where he was Director between 1985 and 1991. In an interview to *Frontline*, Prof. Philip explains why XIME should be the preferred destination for students interested in becoming professional managers and entrepreneurs.

There are more than 4,000 business schools in the country today. What are the advantages that XIME possesses that mark it out from the rest of the business schools?

The main difference between XIME and other business schools is that we admit students purely on merit. Right from the time we started in 1995, we have followed a system of admission based exclusively on merit. The current batch is our 18th, and you will see that there is no compromise on the quality of students. We have no concept of management quota in our admissions. Being a business school, we believe that we should encourage merit.

A second distinct advantage that

we have is that we always manage to get a very high proportion of female students compared with other business schools. Right from our first batch, the proportion of female students in any batch has been between 42 and 50 per cent. In one batch, girls actually outnumbered boys. This is because we have a very open admission system and we have never had a problem in attracting competent female students to XIME. If you look at all the top positions in any batch, six out of seven will invariably be girls. A third strength of XIME is the diversity of our students, who come from all over India.

What courses does XIME offer?

We offer a Post Graduate Diploma in Management [PGDM], like all other top business schools in the country. It is a two-year course and is similar to a Master of Business Administration degree. All our top schools designate their degrees as PGDM. We also offer an Executive PGDM for working professionals.

What are the strengths of XIME?

XIME is very strong in courses relating to international business. We also encourage international linkages, not only with European and American universities but also with top business schools in China, Brazil and Russia. Since we have a stringent input control mechanism in place, which ensures that only good students are admitted, our output benefits from our strong international linkages as well. Our students regularly win prizes in in-



J. PHILIP: "WE ALWAYS manage to get a very high proportion of female students."

ter-collegiate competitions. In fact, students from XIME have a track record of receiving the largest share of prizes in such events in south India. Particularly in debate contests, our students normally win.

We have in our faculty people like Prof. K. Srikantaiah, who teaches at the University of Maryland, and Prof. C.P. Ravindranathan, who retired from the Indian Foreign Service as High Commissioner to Australia.

The culture of XIME is like that of an extended family, and it is fully residential. The students' drive to learn is very high at XIME and the institute, for its part, provides full support to the students who are encouraged to be full professionals in their conduct and outlook from the day they join the institute.

XIME has been recognised as a top institution by members of the industry. Recently, it was recognised as the best business school outside the IIMs in south India by the Madras Management Association. At the acceptance ceremony for this award, questions were asked about the fees that XIME charges, and people were surprised to learn that we charged a lower fee than most other institutes in the same band.

Do you train your students to be aware of social issues?

We do not ignore the social sensitivity side because we understand that our students in their future careers will work with companies that have a strong corporate social responsibility dimension.

Breaking free

Osian's Cinefan 2012 was an ode to excellence, with the narratives paying homage to the perennial outsider. BY AJOY ASHIRWAD MAHAPRASHASTA

If the Japanese film-makers highlighted “deviations”, Iranian film-makers left a mark with their intimate stories of middle-class lives and insecurities. The middle class was a favourite subject with Indian film-makers as well.

DIPPED in the setting sun's bleeding colours, the meandering kites seemed almost bereft of their many-coloured hues, more like tentacles of knotted desires dotting old Ahmedabad's skyline. In the hands of the gifted film-maker Prashant Bhargava, these kites bring about a powerful cinematic subterfuge to tell the story of disintegrated lives and broken promises in the eponymously titled film *Patang* (kite). This year's Osian's Cinefan, New Delhi's only independent Asian film festival, was an ode to such marvels of cinematic excellence, stories from around the world told eloquently by film-makers with an acute eye for their craft.

Back after a two-year break, necessitated by financial constraints, Cinefan 2012 was envisioned as a celebration of the freedom of expression. From the genres that were highlighted, such as animation and pink films, to the themes of individual films, the notion of breaking free from constraints permeated every aspect of the festival. Seamlessly woven into narratives of college revolu-

tionaries, vagabonds, recluses and love-sick musicians is melancholic homage to the perennial outsider – those pushed to the peripheries of organised societies.

From the opening film *Asura*, a Japanese hybrid animation feature, to the closing film *Chitrangada* by Bengali director Rituparno Ghosh, the rebuked and ridiculed “outsider” looms large. Interspersed between these two titles was a world of cinema animated by stories with universal themes.

JAPANESE FILMS

Asura takes the audience to 15th century Japan made desolate by the ravages of a series of natural disasters – flood, drought and famine. Employing this as the backdrop, director Keiichi Sato brings forth the tragic tale of Asura, a boy born out of the darkest pits of these calamities. Abandoned at birth, Asura learns to survive and with time turns to cannibalism as a means of living. It is only when young Wakasa enters his life that he discovers the power of compassion and love. Yet, he and Wakasa are not given a fighting chance as prejudices and jealousies reign. In the world that Sato creates, the venerated values of civilisation crumble at the faintest hint of threat, and *Asura* – the boy destined to live and perish on the margins of civilised society – emerges as a metaphor of the futility of civilisation's dearest values.

There is an almost poetic quality in Sato's cinema, a trait shared in no small measure by his Japanese counterparts. Through animation and in evocative black-and-white frames, Japanese movie-makers successfully infuse the world of celluloid with the melancholic and the “bizarre”. A lot of the films presented at the festival bor-



MANAV KAUL, WHOSE film “Hansa” was adjudged the best film by critics and won the audience award.

PICTURES BY SPECIAL ARRANGEMENT



"ASURA", A JAPANESE hybrid animation feature, tells the tragic tale of a boy destined to live and perish on the margins of civilised society. (Left) South Korean movie "King of Pigs" metaphorically denotes the lost opportunities of the poor in a globalised world.

rowed massively or were immensely inspired by the world of manga – the art of Japanese graphic novels.

Asura is an adaptation of George Akiyama's controversial manga of the same name while Eric Khoo's *Tatsumi* is eponymously named after the Japanese comic artist Yoshihiro Tatsumi. Khoo manages to capture honestly an important phase of manga evolution – when Tatsumi introduces gekiga, a form of manga replete with pervers-

sions of all kinds and lascivious relationships created for the consumption of adults, and yet operating in a meta-narrative that offers a critique of norms in organised societies. While telling the life story of Tatsumi, Khoo intersperses it with Tatsumi's own manga tales.

The festival also became the first platform in India to hold a retrospective of renowned pink film directors Koji Wakamatsu and Masao Adachi.

Pink films represent a genre in Japanese cinema where the lines between mainstream and pornographic films are blurred. Pornographic depictions in these films were used to make alternative political statements and tap into the various counter cultures.

A case in point is Wakamatsu's *Ecstasy of the Angels*, where nudity and the mere act of sex devoid of love become a metaphor against the backdrop of tensions brewing among the cadre



FROM "THE ORANGE SUIT" by Iranian film-maker Dariush Mehrjui.



FROM "CHITRANGADA" BY Rituparno Ghosh.



FROM LATE FILM-MAKER'S Mani Kaul's "Duvidha" (1973).

of a little-known communist guerilla movement in Japan. Debates on individualism and collectivism, revisionism and radicalism, or political strategies and ideology are articulated in the narrative by showing different layers of friction between different groups in a Communist party.

The Japanese director Suji Terayama's cult classic *Emperor Tomato Ketchup* was also shown. The film, which shows children running the

state, can be read in two ways – either you read the characters as dwarf adults standing in for the infantile nature of Japanese society or you see the characters as children trying to act like adults. Nevertheless, the film is about the need to acknowledge the serious nature of infantile sexual drives rather than projecting collective fantasies of innocence onto children.

SEXUAL VIOLENCE & BAN

Two films that left a mark on the festival for their graphic depiction of sexual violence were the 2000 French release *Baise Moi*, the first film to be banned in France, and the Italian film-maker Pier Paolo Pasolini's *Salo, or 120 days of Sodom* banned in Italy in 1976 by the fascist regime. Though set in different contexts, both themes are based on the strong opposition to high-handed governments. While *Baise Moi* contextualises the French immigrant population's violence in an unjust socio-political system, *Salo* depicts the excesses of the then fascist government in Italy, which, in the film, was shown indulging in brutal sexual oppression and sodomy.

IRANIAN FILMS TURN THE CAMERA INWARD

If the Japanese film-makers subvert the norm by highlighting and almost celebrating "deviations", the Iranian film-makers turn the camera inward and leave a mark with their intimate stories of middle-class lives and insecurities.

Ali Mosaffa's brilliant *The Last Step* innovatively portrays an actress' life and strained relationship with her husband. What makes it unique is the hint of an extramarital affair in the storyline, a sort of first in Iranian cinema. Mosaffa in his interaction with the audience after the screening of the film emphasised the difficulty of making a film alluding to an extramarital affair in the Islamic state of Iran.

Another Iranian film that was an audience favourite was the brilliantly conceptualised and executed *Chicken with Plums* by Marjane Satrapi and Vincent Paronnaud of *Persepolis* fame.

An adaptation of Satrapi's graphic novel of the same name, the film catalogues the last eight days in the life of the musician Nasser Ali, a relative of Satrapi. The movie evocatively straddles the story of one man's burning desire for artistic excellence and eternal fame while capturing the quirkiness of a genius, all in the garb of a well-told and moving love story.

THE MIDDLE CLASS

The middle class was a favourite subject with Indian film-makers as well, with directors choosing to highlight trends in the psychologies of the ever-burgeoning middle classes in their narratives. The biggest beneficiaries of economic globalisation, the middle classes in the Eastern world grapple with insecurities and rising aspirations, all intertwined with their previous worlds that are on the brink of change. And as the change is happening, the two worlds of the middle class – the new capitalist world view and the traditional spiritual world view of the East – interject and produce new imaginations that are replete with confusion and tension.

South Korean movie *The King of Pigs* puts this context in a narrative about an elite school where bullying by the rich is commonplace. The rich are called dogs while the poor who are bullied are called pigs. A pig (poor kid) contemplates suicide with assistance from two friends to teach the dogs a lesson that they would never forget. An extreme means of opposition to the rich, it metaphorically denotes the lost opportunities of the poor in a globalised world.

Other South Korean and Thai films were also stories about the complications in middle-class lives that are on the throes of change because of the continuously changing economic landscape.

Turkish films also deal with these themes. *Yeralti* (Inside), by the Turkish director Zeki Demirkubuz, shows the increasing pace of normal life. Through the eyes of the protagonist, he shows how everything has a commercial value and people who are still root-

ed to their non-material selves are being alienated continuously.

INDIAN LEG

The Indian director Ashwini Mallick's film *Monophobia* has a similar theme. It shows how the fear of staying alone is gradually creeping into our minds. Loneliness of the individual in these days of maddening rush is a symptom of the new industrial world.

Most directors featured in the festival employed crime, sex, religion, fragile relationships, and mental illness as themes to document these tendencies in an ever-changing world.

The Indian leg of the festival also attempted to capture the dreams and trepidations of the middle class. However, rather than picking exceptions as stories, the Indian directors looked inward into the local societies, picked mundane stories and wove them into exceptional screenplays.

Masala, a critically acclaimed movie by the Marathi director Sandesh Kulkarni, is the story of a poor and failing entrepreneur. The film highlights very simply a poor man's aspirations to become rich in an unequal world and the strength of the human spirit in the most ordinary circumstances.

The Marathi film-maker Umesh Kulkarni's dark comedy *Deool* (the temple), through its well-written screenplay, uses a metaphorical temple to show political power play and the dubious short cuts that ambitious yet lethargic youth take in India's rural and semi-urban areas to realise their aspirations. They commercialise everything – from emotions to God – to earn a quick buck. The Hindu Right and the so-called secular political parties take advantage of this greed, and it is this harsh reality that *Deool* captures powerfully.

Manav Kaul's *Hansa* won the audience award and was adjudged the best film by critics. Shot using a professional still camera and set in the Kumaon hills in Uttarakhand, it tells the story of a teenage girl's search for her missing father. The girl, Hansa, has a pregnant mother to take care of, and the local



AJITA SUCHITRA VEERA, who won the Best Director award for "Ballad of Rustom".

goon and property dealer has his eyes on their house, which he wants to convert into a mountain resort for tourists. With her father gone, the situation is ideal for the village leaders to exploit the family by pretending to help them. Through a simple narrative, the director brings out the ecological dangers in the country's mountain regions and how tourism has added to the problems.

Even though the festival showcased some excellent films, the bad apples were not too hard to come by. Two of the most disappointing films – largely because of the massive hysteria

Censorship, as reflected in the choice of films shown, remained a pressing concern.

they had generated in the run-up to the festival – were Ashish R. Shukla's *Prague* and Ajita Suchitra Veera's *Ballad of Rustom*. Dubbed a psychological thriller, *Prague* tells the tale of Chandan, a schizophrenic architect. Though the idea in itself had potential and the actors did a decent job, the film faltered owing to its rather unimaginative screenplay. *Ballad of Rustom* has fantastic frames and enchanting music but is guilty of an overdose of self-indulgence that shrouds the film's technical brilliance.

Censorship, as reflected in the choice of films shown, remained a pressing concern throughout the festival.

Oasian's Cinefan paid tribute to the esteemed Indian film-maker Mani Kaul, one of the greatest advocates of freedom of expression, on his first death anniversary. His acclaimed films *Uski Roti*, *Nazar*, *Naukar ki Kameez*, and *Bojh* were shown, while panel discussions on his legacy and contribution were conducted. The discussions brought forth musings from India's new stream of film-makers – such as Anurag Kashyap and Dibankar Banerjee – on the parameters that dictate their choice of films and treatment. The growing trend of making films in the Indian milieu and rendering a refined cinematic language to deal with such subjects were also passionately discussed.

The effect of the changing times on cinema has been enriching and enabling. While Western and South Asian film-makers chose to focus on societal churning affecting the common man, directors from the colonial "Far East" picked up cultural exceptions and brought them centre stage. Such complexities have led to the frequent use of metaphors and a non-linear narrative style and, consequently, this has brought greater diversity to cinema as a medium. From selling dreams and unbridled fantasies, cinema today has come a long way. The craft's inherent potential in illuminating the fault lines of the world we live in was amply displayed at this year's Cinefan. □



REUTERS

Assam

THE sorrow-filled face of an Assamese child on the cover was touching (Cover Story, August 24). What happened in Assam was one of the worst humanitarian tragedies of “modern” India. The plight of the common people in India continues to be the same, though “freedom” was achieved some six decades ago. How can we tolerate assault on women and children?

It directly points to the absence of an effective administration in the State and at the Centre. The government should have the courage to act tough with radical groups.

RAMACHANDRAN NAIR
OMAN

THE violence in Assam underlines the hard truth that creation of the Bodoland Territorial Autonomous District is not a panacea for development and permanent peace in the region. Instead of viewing the incident as a pure ethnic conflict between the Bodo and Muslim communities, the government should evolve a mechanism to identify illegal migrants and refugees from across the

border and take up the matter with Bangladesh. Bilateral talks should be held on the issue of resettlement of illegal migrants languishing in Assam and the rest of the country.

ETTIRANKANDATH
KRISHNADAS
PALAKKAD, KERALA

Maruti's troubles

AFTER the globalisation of the Indian economy, workers' rights and job security are on the decline (“Out of Gear” and “For a just deal”, August 24). It is also a fact that industrial relations at the automobile factories with Japanese collaboration have been very poor. This has resulted in large-scale protests by workers and brutal police action. The conventions evolved by the International Labour Organisation and Indian laws regarding recognition of trade unions are not followed by many multinational companies operating in India.

G. ANUPLAL
BANGALORE

Social evils

THE story of Jayamma and her 20-day-old baby is

shocking (“Unclean’ and outcast”, August 24). It is unfortunate that in a State like Karnataka, which has made a name for itself as a “software hub”, such beliefs are still prevalent. It is unpardonable that the local authorities have done little in educating the population, especially the youth, to uproot this social evil.

MOHAMMED MUDDASIR
VIJAYAWADA, A.P.

Privatising water

THE Khandwa water supply model is not the first public-private partnership model in India but it is the first in Madhya Pradesh (“Tapping profit”, August 24). There are many projects that sell the myth of 24x7 piped supply. Similar schemes in Latur, Nagpur and elsewhere have failed to deliver. There is no need for such expensive models in our country.

MAKARAND PUROHIT
BADWANI, M.P.

Power failure

THE recent collapse of three power grids in northern India reveals the state of affairs in the power sector (“Power and pitfalls”, August 24). India is facing an acute power crisis. Demand is continuously rising, but supply is hampered by distribution loss and poor management.

This problem is likely to increase because setting up new projects will not be easy owing to problems in land acquisition, environmental clearances and the soaring

price of crude petroleum in international markets.

RITESH RANJAN
RANCHI, JHARKHAND

Gore Vidal

FOR years I was looking for a common name for the two major right-wing parties of the U.S. I have got the answer now: “There is only one party in the U.S., the property party... and it has two right wings: Republican and Democrat.” The essay on Gore Vidal was inspiring (“An American original”, August 24). In our country also there appears to be only one party with multiple right wings. All practise nepotism, corruption and crony capitalism. We need a Gore Vidal to deride our polity.

ARAVEETI RAMA YOGAIAH
HYDERABAD

Lakshmi Sahgal

THE death of Lakshmi Sahgal, one of the founder members of AIDWA and a follower of Netaji during the Second World War, has created a void in the Left movement in the country and it is the end of an era (“Communist captain”, August 24). Although she was born in a privileged family, she chose to serve the marginalised people of all hues in and around Kanpur until her death at the age of 97.

N.C. SREEDHARAN
KANNUR, KERALA

ANNOUNCEMENT

Letters, whether by surface mail or e-mail, must carry the full postal address and the full name, or the name with initials.

Great granite loot

A letter from a former Collector blows the lid off the illegal activities of Tamil Nadu's politically powerful granite magnates. BY S. DORAIRAJ

The granite mafia in the Madurai belt has plundered the natural resource for the past 20 years quite openly, but the government action came belatedly, only after the letter was leaked.

THE Tamil Nadu government, at last, appears to have cracked its whip on the politically influential granite mafia, which has been plundering the natural resource across the State for the last two decades. This followed the leak of a letter that the then Collector of Madurai, U. Sagayam, wrote to the Principal Secretary of the State Industries Department on May 19.

Informed sources infer from the letter that the loss of revenue to the government in recent times in Madurai district alone would be more than Rs.35,000 crore. What is revealed in Sagayam's letter is only the tip of the iceberg, considering that illegal quarrying has been going on in other districts too, they say.

With the prevailing economic policies offering ideal conditions for loot, the mighty granite lobby has been flouting rules and regulations. It has been grabbing government and private plots and Panchami lands meant for Dalits, occupying waterbodies and waterways and encroaching upon sites of cultural and archaeological significance. Quarry operators have even uprooted boundary stones put up by the authorities.

The issue has for long been highlighted by environmentalists, social activists, functionaries of non-governmental organisations and leaders of Left parties. Chief Minister J.

Jayalalithaa, while campaigning for the All India Anna Dravida Munnetra Kazhagam (AIADMK) during the Assembly elections last year, referred to the revenue loss suffered by the State owing to illegal granite quarrying. She also promised action against erring quarry operators in the event of her returning to power.

However, just as the previous Dravida Munnetra Kazhagam (DMK) regime maintained a stony silence on the issue, the new government, which assumed office on May 16, 2011, did not get into action until the bombshell letter found its way into the public domain. On August 10, Jayalalithaa held discussions in Chennai with Ministers and officials concerned on the issues relating to granite quarrying.

According to informed sources, the letter was sent by Sagayam on May 19. Four days later, he was transferred and posted as Special Officer and Managing Director of the Handloom Weavers' Cooperative Society. The letter was leaked on August 1.

Citing the "illegal activities" of three major granite operators in Melur taluk in Madurai district, Sagayam stated in his 13-page letter that a detailed

study of the mining sector would reveal that the scam could have caused a loss of Rs.15,000 crore to the exchequer. The three granite companies mentioned in the letter are PRP Exports, Olympus Granites and Sindhu Granites.

The letter exposed how farmers and other rural people had been deprived of their livelihoods and how it became possible for the granite companies to continue their loot in connivance with the officials of the Departments of Revenue and Geology & Mining for several years. It also suggested a plan to plug the loopholes in the system of granite mining and marketing. The nine-point plan included honest officers conducting a detailed, scientific survey within a period of one month; making private operators remit the



U. SAGAYAM, FORMER Collector of Madurai, whose leaked letter exposed the multi-crore granite scam.

BIDY GHOSH



S. JAMES

A VIEW OF Pokkishamalai, a hillock at Keezhalavavu near Melur in Madurai district. The loss to the State exchequer on account of the illegal mining is put at more than Rs.35,000 crore.

amount usurped by them through illegal mining to the government treasury; cancelling the lease agreements with the erring operators; seizing and auctioning the illegally quarried granite blocks; and doing away with the raising-cum-sale agency system adopted by Tamil Nadu Minerals Limited (TAMIN).

Following a complaint from the Tamil daily *Dinabhooni*, Sagayam ordered on April 3 intensive surveys and inspections at the quarries run by the granite companies. It was found that illegal mining of 4,511.571 cubic metres of granite by the three companies alone had resulted in a revenue loss of Rs.23.42 crore to the government, the letter pointed out.

It said that the government must have suffered a further loss of Rs.16,338 crore, owing to illegal quarrying to an extent of 39,30,431 cu. m from government *poramboke* land and land earmarked for bullock cart roads in Keezhalavavu, Keezhaiyur, E.Malampatti and Semminipatti villages, as claimed by the complainant. It said that the estimate of the actual revenue loss to the government could be 100 per cent higher if the quarries run by TAMIN and private companies in Melur taluk were inspected scientifically.

In addition to this, it was alleged by the complainant that granite blocks measuring 8,37,500 cu. m worth Rs.3,350 crore were illegally moved out of the quarries run by TAMIN, the letter said. Video evidence had been presented to the government to show the illegal removal of granite blocks from these quarries to private storage yards.

Sagayam said in the letter that apart from the inspections conducted by the officers deputed by him, he had personally visited the villages and ascertained the “illegal mining” by the companies. He had pulled up the personnel of the Revenue and Geology and Mining Departments for failing to prevent these “illegal activities”, he added.

Expressing concern over the loss of livelihoods, the letter said that ponds and lakes hitherto used for irrigating farmlands had been destroyed or rendered useless by private operators who had converted them into storage yards. Destruction of the waterbodies had forced farmers to scale down farming activities. The cattle population had also come down drastically as the grazing land had shrunk, it said.

The letter said there was a time when farmers put up a spirited resist-

ance to such encroachments. However, in the course of time they lost their assertiveness and the strength to resist the powerful granite empire. Gripped by fear, they had become silent. Worse, the agriculture-based, self-sufficient village economy had suffered a silent death. On the other hand, certain private granite companies had grown to monstrous proportions in money power and muscle power, the letter added.

Lambasting the personnel of the departments concerned for not taking action on the basis of complaints lodged by villagers, Sagayam said in the letter that they had failed to respond positively either out of fear or because they had received pecuniary benefits. Whenever he planned to undertake inspections in the areas concerned, the information was passed on well in advance to the quarry owners.

The whole issue assumes significance because of the political influence of the quarry operators. The PRP group, run by P.R. Palanisamy, is one of the leading companies in the granite sector in the country. It has maintained “cordial relations” with the ruling class, observers point out. The power and influence of the granite magnates was such that in certain cases the police allegedly foisted cases

Novel ways to grab land



GRANITE BLOCKS STACKED around a house at Rangasampuram near Melur, making access to it difficult.

GRANITE quarry operators have adopted a unique strategy to grab the lands of villagers. B. Stalin, a lawyer-cum-social activist, says they virtually lay siege to a piece of land they want by dumping huge granite blocks all around it. In the absence of accessibility to the land, the owner, a small or marginal farmer or a stone-chisel worker, is left with little option other than selling the property at a throwaway price.

In Rangasampuram, a powerful quarry operator has adopted this strategy against a family of chisel workers. Their house is situated perilously close to his huge quarry. It is a clear case of a violation of a provision in the Tamil Nadu Minor Mineral Concession Rules, 1959, which stipulates that no quarry lease should be given within 300 metres of any inhabited site.

M. Santhi, a resident, said, "All our pleas to the quarry people fell on deaf ears. Whenever they conducted

quarrying work, the entire house shook violently. Cracks have appeared on the wall. But where can we go if driven out of this place?" The Collector visited the village recently, local people said.

Some residents of Keezhavalavu referred to a writ petition filed with the Madurai Bench of the Madras High Court in 2007. V.R. Thangaraj, leader of the Melur taluk inland fisheries cooperative society, said in the petition that granite operators were dumping the waste produced during quarrying into irrigation tanks, thereby blocking the free flow of water into the next tank. They also use waterbodies as dumping sites despite opposition from the residents of Keezhavalavu village, he said.

The local panchayat, through a resolution passed unanimously on May 31, 2007, said that waterbodies in the area, including Adanchan, Sirumanickam, Koothan Chetty, Poo-ran, Oothu, Pillaiyar, Chinnar Oothu

and Thulukkan tanks, should be protected from the onslaught of quarry operators.

K. Meyyar, taluk committee secretary of the Communist Party of India, said that several villages in the area suffered from dust pollution. A large number of migrant workers from north India were exploited by the quarry operators, he alleged. They had scant regard for labour laws. Not even 10 per cent of the workers were covered under the Employees' State Insurance (ESI) scheme, he said.

L. Rathinam, a resident of Sem-minipatti, said that around seven acres (one acre is 0.4 hectare) of Panchami land lying near the Pura-koodu hillock had been illegally occupied by the granite mafia. The hillock, once a majestic landmark, has been flattened. The mountain spring and a temple for the village deity have perished.

M. Muthiah, a resident of Rangasampuram, said that most of the residents of his village and others in the area were load-men or chisel workers who shaped waste stones. "By and large these workers are Dalits. They cannot voice any protest against the mighty quarry operators," he said.

Another landmark that is on the wane is the famous Sarkarai Peer Malai at Amman Kovilpatti. The beautiful hillock stood as a symbol of communal harmony as it had a temple and a dargah located atop, local people lament.

S. Dorairaj

against persons who complained about the illegal quarries.

Strangely enough, almost all the major political parties, including the AIADMK, the DMK and the Congress, have maintained a stoic silence on the issue. The Pattali Makkal Katchi did

not go beyond issuing a statement calling for a probe by the Central Bureau of Investigation (CBI).

However, the Communist Party of India (Marxist) took up the issue and held demonstrations demanding a CBI inquiry. The party conducted a

survey to study the impact of illegal quarrying on local livelihoods.

Claiming that illegal mining could have cost the exchequer more than Rs.35,000 crore, State committee secretary of the party G. Ramakrishnan said 14 tanks and 13 irrigation canals

had been gobbled up by the greedy operators. According to him, 35 villages in Madurai district suffered serious environmental pollution. Commending Sagayam, Ramakrishnan said that the State government owed the people an explanation as to why he was shifted from Madurai suddenly and why it had not initiated action against the granite mafia until his letter was leaked. He also flayed DMK chief and former Chief Minister M. Karunanidhi for being silent on the issue.

Interactions with bureaucrats, leaders of farmers' associations, trade union leaders, Right to Information (RTI) Act activists and NGO functionaries also reveal that there is no exaggeration in Sagayam's observations about several villages in Melur taluk.

K. Vijayan, secretary of the TAMILNADU Employees Union, said that the State government agency was incorporated in 1978 by the then Chief Minister, M.G. Ramachandran, with the lofty idea of continuous updation of mining technology, quality control measures and mineral processing and marketing, besides enhancing employment in rural and backward areas.

TAMILNADU had quarries with good-quality granite. It allowed private players into its territory by introducing the raising-cum-sale system in different parts of the State, saying it could not afford sophisticated equipment. The introduction of the contract system in the late 1990s paved the way for pilferage and smuggling from several TAMILNADU quarries to private storage yards as the contractors had their own quarries in adjacent plots in violation of rules, he said.

In a State "bestowed with vast resources of granite deposits", the draft granite policy introduced in 2009 has not taken off in the face of resistance from the granite lobby.

S. Murugesan, an RTI activist who fired the first salvo against the private quarry operators in Melur area, recalled his battle against the granite empire right from 2008. Using the RTI, he collected information from the Department of Geology and Mining and from the Customs Department

with regard to the volume of export of granite blocks by PRP Exports in the period 2004-05 to 2007-08. He also moved a writ petition before the Madurai Bench of the Madras High Court in 2009 seeking a fresh inquiry in the case on the grounds that the figures obtained from the two departments showed a huge difference.

Justice K. Chandru, allowing the writ petition, said in his order of February 4, 2011, that the Commissioner, Department of Geology and Mining, should conduct a detailed inquiry into the allegations of suppression of transactions and the consequent tax evasion by PRP Exports. He also directed the officer to inspect the quarry fields taken on lease by the private company, if necessary, and complete the inquiry within three months. The court quashed an order passed on July 2, 2009, by the then Collector of Madurai, giving a clean chit to the company.

But the order was stayed by a Division Bench. Murugesan said he would continue with his legal battle against the granite mafia. He expressed the hope that the present action by the government would yield positive results.

T. Lajapathi Roy, a High Court advocate, said operations continued in several quarries in Melur taluk even after the expiry of the lease period on the strength of a stay from the court. The quarries had been converted into highly protected zones. It was for the first time in 20 years that official teams entered the area to conduct a detailed survey, he pointed out.

ACTION LAUNCHED

The district administration has now initiated certain steps against the granite majors. Cases have been booked under Sections 447 (trespass), 379 (theft) and 201 (destroying evidence) of the Indian Penal Code, besides invoking certain provisions of the Mines and Minerals (Development and Regulation) Act, 1957, and the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992.

Eighteen teams of officers formed

by the Madurai Collector, Anshul Mishra, started inspecting, from August 2, 175 quarries in the district. The Collector himself has surveyed more than once the quarries belonging to the granite majors. The teams have already ascertained various violations, such as encroachment of government and *patta* lands and destruction of waterbodies.

Raids were conducted at the offices of the granite companies and residences of their personnel. Documents relating to the purchase of land were seized. Some of the granite companies have been sealed, and the police have made some arrests.

Anshul Mishra has expressed satisfaction over the progress of the survey and investigation. He told *Frontline* on August 10 that all the six zonal officers reported to him on a daily basis and the administration was able to detect some violation or the other every day. As on August 9, of the 133 granite quarries inspected, 58 were found to have violated rules. He said, "It is for the first time such a comprehensive survey is being taken up. To our great surprise, there are quarries that are hidden. The time allotted initially [for fulfilment of the task] may not be sufficient. We may need another 10 or 15 days to complete it."

Now the focus of the teams had shifted to assessing the volume of the granite quarried and stored, he said. Since the private quarry operators had removed the boundary stones, the district administration has been using gadgets such as total station solution to conduct the survey.

As many as 30 waterbodies have been occupied by the quarries. In Rangasamypuram, the mining was done underground. In one case, the companies had encroached upon land reserved by the government for future use, he said. With the emergence of a monopoly in the granite sector in the district, several other companies resorted to operations through a particular granite major. There have also been sustained efforts by the granite operators to silence the villagers through intimidation or bribes. Since

Monuments in peril

A BIRD'S-EYE view from the Panchapandavar hillock at Keezhavalavu on the Melur-Tiruppattur road gives an idea of the threat posed by illegal quarrying to ancient monuments and archaeological sites. Private quarry operators have not spared archaeological sites. Thousands of granite blocks are piled up around the hillock as the areas close to the foothills have been converted into a storage yard.

The archaeologist C. Santhalingam told *Frontline* that the private quarries operated in clear violation of the Ancient Monument (Preservation and Conservation) Act, 1925, which laid down that any addition or alteration of structures would be permitted only 300 metres away from a monument. Of this, the first 100 metres would be treated as restricted area and the remaining 200 metres as regulated area. Within the restricted area, permission would not be granted for any construction activity.

These rules have been flouted in respect of certain monuments including the 3rd century B.C. Jain



S. JAMES

THE SCULPTURE OF a Jain Tirthankara on top of the Arittapatti hill near Melur. Illegal quarrying in Arittapatti has been suspended now.

monument at Thiruvadavur where quarrying is done up to a distance of 50 metres from the monument, which is under the protection of the State Archaeology Department. Even the approach road to the site

has been blocked. "If quarrying is allowed any further, nobody can visit or inspect the Jain rock-bed there," Santhalingam said.

The explosives used for quarrying would also affect the boulders that were part of the monument, he warned.

The 2nd century B.C. Jain monument at the Panchapandavar hillock, which was declared a national monument by the Archaeological Survey of India (ASI), escaped, thanks to the intervention of the Madras High Court. The Society for Community Organisation Trust took up its care with the support of the local people in 2008.

Another site where illegal quarrying was abandoned owing to local initiative was the 8th century cave temple of Siva at Arittapatti in Melur taluk. The site had been declared a protected monument by the State Archaeology Department. The 1st century B.C. Jain monuments at Muthupatti village on the Madurai-Theni road under the ASI had also been saved, Santhalingam said.

S. Dorairaj

the steps taken by the district administration had instilled confidence in them, people have started coming out with complaints of land grabbing and other violations.

According to police sources, residents of certain villages in Melur taluk have sought a fresh probe into the cases of "unnatural deaths" of quarry workers during the past four years.

The police have asked banks to freeze the accounts of the major granite units. As the granite industry barons, including Palanisamy, are still at large, the authorities have initiated steps to issue look-out circulars through the Central agencies. The private operators had started covering up the illegally quarried areas by dumping sand and waste stones, official

sources said. But the granite lobby denies all the charges of illegal mining and encroachment of government and private lands. Senior lawyer Veera Kathiravan in Madurai described as imaginary the claim of a revenue loss of Rs.15,000 crore owing to illegal mining and violations. According to him, considering the volume of the granite produced and exported, no fraud was possible.

Officials were making statements just for publicity, he said, adding that the entire volume of stones quarried could not be treated as granite and that the price was fixed only on the basis of the quality of the material.

The quarry operators were left with no option other than keeping the non-saleable granite blocks far away

from the quarries as the Granite Conservation and Development Rules, 1999, provided for storing them separately, he argued. "It is a lawful business and officials cannot seal it just like that."

Despite the crackdown, the granite operators continue to be powerful. No stranger who enters their domain can escape surveillance. Whenever media-persons and government personnel visit the villages, their movements are monitored by motorcycle riders, who pass on the information through mobile phones to their masters.

A youth who was following the Collector while he was inspecting quarries and storage yards of private granite operators in the taluk on August 12 was arrested. □



KAI PFAFFEN BACH/REUTERS

JAMAICA'S
USAIN BOLT
winning the
men's 100-metre
dash.

Run of legends

The London Olympics dazzled with its sheer organisational brilliance as well as outstanding sporting performance. **BY KAMESH SRINIVASAN**

The fastest man on earth, Usain Bolt, and the man with the most gold medals in Olympic history, Michael Phelps, mesmerised the world during the two-week event, which also saw the U.S. return as the top sporting nation.

IT was one thing that Sebastian Coe, the Chairman of the London Organising Committee of the Olympic and Paralympic Games (LOCOG), had guessed wrong. In the run-up to the 2012 Games, the two-time Olympic champion, who held many world records in middle-distance running, had expected the Chinese to dominate the Games as they did in Beijing.

But the United States raced past China to the top,

winning 104 medals in all, 46 of them gold. China had a haul of 38 as against 51 in Beijing and a total of 87 medals. The host country rose to the occasion and finished third, ahead of Russia, winning 65 medals in all, including 29 gold, 10 more than in Beijing.

BOLT OF LIGHTNING

The London Games were not about the changing equations, however. They were about the stars, especially the “living legend” Usain Bolt and the greatest Olympian of all time Michael Phelps. Between them, the fastest man on earth and the man with the most gold medals (18) in Olympic history mesmerised the world.

With his sheer drama and charisma, “lightning” Bolt stole the show. The Jamaican speed king won the hearts of fans by constantly interacting with them and with his trademark postures, even before the races that he eventually won with great ease.

Bolt put his index finger to his lips at the finish line in the 200-metre race to signal silence to those who had doubted he could do it again. The multiple World and Olympic champion, who holds the world



JAMAICA'S SHELLY-ANN FRASER-PRYCE got gold in the women's 100 m.

OLIVIER MORIN/AFP

record in the 100 metres (9.58 seconds) and the 200 metres (19.19 s), had lost his 100 m crown in the 2011 World Championship in Daegu, South Korea, because of a false start and had been beaten twice by compatriot Yohan Blake in the national trials.

While Bolt sped away with the 100 m and 200 m golds, as he did in Beijing, clocking 9.63 s and 19.30 s respectively, he also ran his heart out in the 4x100 m relay to anchor Jamaica to the gold with a world record 36.84 s. That run of his will be remembered forever. Bolt was very serious about getting it right, and in the end the momentum almost carried him on a victory lap. He later hoped his fans would forgive him for celebrating late.

“It is always a beautiful feeling to end like this. The team came out and gave their all. I knew a world record was possible,” said Bolt, who rated the relay gold much closer to his heart than the other two. He joined Ray Ewry of the U.S. as the only winners of three athletic gold medals twice.

OTHER STARS

There were many other memorable moments in track and field, such as Kenya's David Rudisha winning the 800 m in a world record 1 minute 40.91 seconds. The American women's sprint relay team – Allyson Felix, Tiana Madison, Bianca Knight and Carmelita Jeter – diverted some attention away from Bolt and company by winning the gold with a world record 40.82 s. Allyson Felix won two other gold medals, including in the 200 m ahead of the 100 m champion Shelly-Ann Fraser-Pryce of Jamaica.

Keshorn Walcott, 19, of Trinidad and Tobago, won the men's javelin with a national record 84.58 m. From junior world champion to Olympic champion, it was a fast-track transition for him. He said his action suited javelin more than bowling in cricket, a

national passion in his country.

The evergreen Yelena Isinbayeva of Russia, who has 28 world records, failed to win her third gold in the Games in pole vault and had to settle for bronze.

The Athens Games (2004) gold medallist, Liu Xiang of China, fell after hitting the first hurdle in the 110 m hurdles heats and retired with an injured Achilles tendon. In Beijing, too, he had retired in almost similar fashion. The defending champion and world record holder Dayron Robles of Cuba also clutched his right hamstring in the final, leaving Aries Merritt to strengthen the gold collection of the U.S.

Though the Jamaicans outran the Americans in the sprints, the U.S. reaped 29 athletic medals, including nine golds. It won 16 gold medals in swimming, half of them coming from Michael Phelps and Missy Franklin, who won four each. The U.S. won gold medals across 15 disciplines.

Incidentally, the two swimmers won more gold medals than Australia, which finished tenth with seven golds, a big fall from 14 golds and sixth place in Beijing. Australia's Sally Pearson won the women's 100 m hurdles gold with assurance, but its swimmers, shockingly, failed to win a single gold.

PHELPS' RECORD

Phelps won four gold and two silver medals, making him the most successful athlete in the Olympics for the third time in a row. He had won six golds and two bronzes in Athens, and eight golds in Beijing. Phelps, who made his debut in Sydney in 2000, wound up with 18 golds, two silvers and two bronzes medals in his fourth Olympics. He beat the all-time record of highest number of Olympic gold medals of gymnast Larysa Latnina.

Phelps lost to South African Chad le Clos by five hundredths of a second in the 200 m butterfly but equalled the

MEDALS TALLY

Country	G	S	B	T
United States	46	29	29	104
China	38	27	22	87
Great Britain	29	16	19	64
Russia	24	25	33	82
South Korea	13	8	7	28
Germany	11	19	14	44
France	11	11	12	34
Italy	8	9	11	28
Hungary	8	4	5	17
Australia	7	16	12	35
India	0	2	4	6
G: Gold; S: Silver; B: Bronze; T: Total				

record of 15 Olympic gold medals by taking the 4x200 m freestyle relay gold. Phelps went on to win the 200 m individual medley ahead of Ryan Lochte and the 100 m butterfly with a sweet revenge over Chad Le Clos, to become the first man to win those events in three Games. He then added the 4x100 m relay gold to his tally and set the bar very high for anyone dreaming of reaching it. The international swimming federation, FINA, honoured Phelps with an award for becoming the most decorated Olympian ever.

CHINA STRUGGLES

The Chinese struggled to match their own standards but did manage to break new ground with five swimming golds, including two by the 16-year-old Ye Shiwen in the women's 200 m and 400 m individual medley, the latter with a world record.



MARTIN BUREAU/AFP

MICHAEL PHELPS of the United States in the men's 400 m individual medley final. He has the highest number of Olympic gold medals, 18, now.



ERIC FEEFERBERG/AFP

THE WOMEN'S 4X400 m relay team of the U.S. that won the gold.

The silver lining

INDIAN sport hit a new high with the London Olympics, though it slipped from the gold standard.

It was heartening that India could win six medals, but it was disappointing that none of its stars could emulate Abhinav Bindra, who won an Olympic gold in Beijing. Bindra's gold in shooting remains the only individual gold for the country in more than 100 years of the Olympics. India had won eight gold medals in hockey, but this time the team finished last among 12 teams, without winning a single match.

Rapid fire pistol shooter Vijay Kumar and wrestler Sushil Kumar matched Rajyavardhan Singh Rathore's silver medal in Athens in 2004. Both were capable of winning the gold and were pretty close to it. Even the four bronze medallists – Gagan Narang (shooting), Saina Nehwal (badminton), Mary Kom (boxing) and Yogeshwar Dutt (wrestling) – were all capable of going all the way and being the best in their event.

But as Bindra observed, there is an aura about the Olympics that brings the best sportspersons around the world together once in four years. You may have been on top of your sport for years, but the challenge is to do it when the whole world is watching. There is no better stage in the world than the Olympics.

Sushil Kumar's fighting skills were phenomenal as he started his campaign by beating the defending champion and former World champion in the 66 kg freestyle wrestling, Ramazan Sahin of Turkey. The draw itself would have intimidated many, but the Najafgarh tiger took it as an opportunity to march ahead. When he made it to the final, Sushil looked the better wrestler as he matched wits



MEDAL WINNERS (FROM left) Saina Nehwal, Mary Kom, Gagan Narang, Vijay Kumar, Sushil Kumar and Yogeshwar Dutt at a reception hosted by the Prime Minister in New Delhi.

with Japan's Tatsuhiro Yonemitsu, reigning Asian Games champion and World Championship silver medallist.

While Yonemitsu was a bundle of energy, as he had been stretched to a third period in only one of his three earlier bouts, Sushil was below his best as he had been physically drained by a bout of dehydration. He had won all his bouts in the extended third period and was close to defeat in the semi-finals, and thus had expended a lot of energy in this very demanding sport.

"Everyone thought that I would win the gold, but I am happy with the silver. It is because of the good wishes of the whole country," said Sushil. Indian wrestling has made progress, winning two medals this time. Yogeshwar Dutt, who had lost in the quarterfinals in Beijing and had to endure two surgeries of the knee and battle a back problem, fought strongly in the repechage to get the bronze medal. He had lost in the pre-quarter-finals to the four-time world champion Besik Kudukhov of Russia.

"I was very tired when I got to the bronze medal match. But one thing that kept driving me was the thought that I have to win the medal for the country," Dutt said after spinning the semi-finalist Ri Jong Miyong of DPR

Korea like a top in the climax to win the bronze in style.

In wrestling, even if you lose in the first round, you still can win a medal, and even if you make it to the semi-finals you may not win a medal. While the finalists fight for gold, the wrestlers who have lost to them in the earlier rounds fight for bronze in two different groups. Amit Kumar and the lone woman wrestler, Geeta Phogat, also made the repechage but lacked the experience to capitalise on their second chance to win a medal.

Shooting was also, in some ways, a success story for India. Apart from Bindra, three others, Gagan Narang, Manavjit Singh Sandhu and Ronjan Sodhi, were capable of winning gold. Vijay Kumar, a subedar in the Army, was the dark horse. He beat the world record-holder Alexei Klimov of Russia in the knock-out final. He had conceded a two-point lead to the eventual gold medallist Leuris Pupo of Cuba after the fourth series in the final, which denied him a chance for the gold. "I had no pressure. We were mentally prepared well," said Vijay who had trained with Russian coach Pavel Smirnov.

In the air rifle event, Narang was 0.3 point away from the gold after the sixth shot in the final but eventually had to settle for bronze. Bindra had

won the gold in Beijing in this event.

Asian Games gold medallist and two-time World Cup gold medallist Ronjan Sodhi was in command in double trap until he missed four birds in the last three stations. He missed the final by three points and finished 11th.

Former World champion and the reigning Asian champion Manavjit Singh Sandhu's good work was undone by one bad round of 22 out of 25. He had shot 70 out of 75 on the first day, and a 49 out of 50 on the second. He missed the final by three points and was 14th overall. He had shot identical scores of 116 in Athens and Beijing. Joydeep Karmakar, a rank outsider, finished fourth in the men's rifle prone event. He had not won the Olympic quota but delivered a fabulous performance in a class field, shooting 595 in qualification and 104.1 in the final.

Badminton ace Saina Nehwal had reached the quarter-finals of the Beijing Games as a precocious talent at 18. In London, she lost to the eventual silver medallist Wang Yihan in the semi-finals, without even a token fight. Another badminton star in the making, P. Kashyap, made the quarter-finals in the men's singles and lost to the top-seed, Lee Chong Wei



PAUL SANCY/AP

SILVER MEDALLIST SUSHIL Kumar (in red) and Tatsuhiro Yonemitsu of Japan in the 66-kg freestyle wrestling final.

of Malaysia, the eventual silver medallist.

Five-time world champion Mary Kom joined Saina in winning a bronze, in women's boxing, which made its Olympic debut in London. In a field of 12 boxers, Mary won two bouts to ensure her medal; she lost the semi-finals to the eventual gold medallist, Nicola Adams of Britain. Not one of the Indian men, including Asian Games champions and world championship bronze medallists Vijender Singh and Vikas Krishan, won a medal.

In athletics, Krishna Poonia and Vikas Gowda took the seventh and eighth places in women's and men's discus throw, respectively. Walker K.T. Irfan was 10th, while Tintu Luka made the semi-finals of the women's 800 m. In tennis, Leander Paes and Sania Mirza lost in the quarter-finals to the eventual gold medallists Victoria Azarenka and Max Mirnyi of Belarus. Paes, competing in his sixth Olympics, and Vishnu Vardhan lost in the men's doubles in the pre-quarter-finals to the eventual silver medallists, Michael Llodra and Jo-Wilfred Tsonga of France. The seventh-seeded Mahesh Bhupathi and Rohan Bopanna won a long match against Alexander Bury and Max Mirnyi in the first round but lost to the eventual bronze medallists, Richard Gasquet and Julien Benneteau of France.

Archery was a disappointment as World No.1 Deepika Kumari and the rest of the five members in the women's and men's sections failed in the individual and team competition. The archers need better guidance, and professional coaches to take care of them when it matters the most.

After having won only seven individual medals over the years, Indian sport did very well to capture six in one edition. If the momentum is sustained, there can be a couple of gold medals in Rio.

Kamesh Srinivasan



MICHAEL SOHN/AP

WU MINXIA OF China in the women's 3-metre springboard diving final, in which she took gold. (Below) Australia's Sally Pearson winning the gold in the women's 100-metre hurdles.



ANJA NIEDRINGHAUS/AP



BEN STANSALL/AFP

RUSSIA'S DARIA DMITRIEVA performs her ribbon routine in the individual all-around final of the rhythmic gymnastics. She took silver in the event, while compatriot Evgeniya Kanaeva won the gold.

China, which fielded only 396 athletes, won 25 of its 38 gold medals in badminton, diving, gymnastics, table tennis and weightlifting. It had a solitary gold in athletics through the 20-km walker Ding Chen.

BRITAIN

Britain thrived in cycling (seven medals), rowing (four) and athletics (three). It won gold in 13 disciplines, though swimming was not one of them. Mo Farah was the star with his double gold in the 10,000-m and 5,000-m runs, while Jessica Ennis won the heptathlon and Greg Rutherford the men's long jump.

Chris Hoy won his sixth Olympic gold in cycling and was given a meet-

ing with the five-time gold medallist and rowing legend Steve Redgrave in the "mixed zone" after his event. The Youth Olympics champion, Jade Jones, got the transition equation right as she emerged the Olympic champion in the 57-kg category in taekwondo.

STABLE RUSSIA

Though it lost its third place, Russia was stable and in fact won a gold medal more than the 23 it won in Beijing. It won eight golds in athletics, four in wrestling and three in judo.

South Korea jumped up to fifth place even though it won 13 golds as it had done four years ago, while others, Germany (11 golds) in particular,

slipped. There was considerable tension as four women's badminton doubles teams were disqualified for not playing their best in their last league matches, as defeat suited them for the knock-out ahead.

Zhao Yunlei won golds in the women's doubles partnering Qing Tian (after China lost its top doubles team in the "scandal") and the mixed doubles partnering Zhang Nan.

TENNIS

Andy Murray warmed the hearts of the whole of Britain as he finally rose to his potential, beating Roger Federer in a one-sided final in Wimbledon for the tennis gold. World record holder Peter Wilson won the double trap gold, the only shooting gold for Britain.

The Williams sisters, Serena and Venus, collected two more Olympic gold medals for the U.S. In a brilliant performance, Serena beat Maria Sharapova of Russia in the final for the loss of just one game. She had given an almost similar treatment to Victoria Azarenka of Belarus, the top-seed, in the semi-finals.

MEMORABLE MOMENTS

There were memorable moments and unforgettable heartbreaks. One memorable moment was of the opening ceremony, when Danny Boyle, the director of the Oscar-winning *Slumdog Millionaire*, presented a pre-recorded footage of the Queen jumping down from a helicopter with James Bond on a mission. The three-hour opening ceremony recreated the English countryside, while imbibing the rich history and literature of the country.

From stunts to stunning the world with efficient organisation, which won the hearts of athletes and spectators alike, London did a fantastic job of hosting the Olympics for the third time, the first city to do so. It had hosted the Games in 1908 and 1948.

At the colourful closing ceremony, when Britain paraded its modern life, music and fashion, Seb Coe said fittingly: "When our time came, Britain, we did it right." □

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